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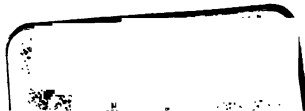
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COMPILED BY  
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OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW.

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## CONTENTS.

|                                                                                                          | PAGE             |
|----------------------------------------------------------------------------------------------------------|------------------|
| ADVERTISEMENT . . . . .                                                                                  | iii              |
| LIST OF ABBREVIATIONS . . . . .                                                                          | vii              |
| COMPLETE INDEX TO ALL ENGLISH CASES FOR<br>THE YEAR, WITH REFERENCES. . . . .                            | ix               |
| TABLE OF CASES FOLLOWED, OVERRULED, OR<br>SPECIALLY CONSIDERED . . . . .                                 | lix              |
| TABLE OF STATUTES . . . . .                                                                              | lxxi             |
| TABLE OF RULES OF COURT . . . . .                                                                        | lxxxvii          |
| TABLE OF CASES IN THE DIGESTS FOR 1883 AND<br>1884, WHICH HAVE SINCE BEEN DECIDED ON<br>APPEAL . . . . . | xciii            |
| DIGEST OF CASES . . . . .                                                                                | Columns 1 to 532 |





## LIST OF ABBREVIATIONS.

---

|                              |                  |                                                           |
|------------------------------|------------------|-----------------------------------------------------------|
| <b>Amer. R.</b>              | <i>indicates</i> | THE AMERICAN REPORTS.                                     |
| <b>App. Cas.</b>             | "                | APPEAL CASES (LAW REPORTS).                               |
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| <b>C. of S. Cas. (Just.)</b> | "                | Id., COURT OF JUSTICIARY.                                 |
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# COMPLETE INDEX TO ALL ENGLISH CASES FOR THE YEAR 1885.

| Name of Case.                                                                                | Reference to Reports.                                                              | Column<br>of<br>Digest. |
|----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------|
| <b>A.</b>                                                                                    |                                                                                    |                         |
| <i>A. (or M.) v. M.</i> .. .. .                                                              | 10 P. D. 178, 54 L. J. P. 31, 33<br>W. R. 232                                      | 334                     |
| <i>Accident Insurance Co. v. Accident, Disease,<br/>and General Insurance Corporation</i> .. | 54 L. J. Ch. 104, 51 L. T. 597,<br>W. N. 1884, pp. 176, 191                        | 471                     |
| <i>Acton v. Crawley</i> .. .. .                                                              | 28 Ch. D. 431, 54 L. J. Ch. 652,<br>52 L. T. 460, 33 W. R. 611, 49<br>J. P. 598 .. | 516                     |
| <i>Acton Local Board v. Batten</i> .. ..                                                     | 28 Ch. D. 283, 54 L. J. Ch. 251,<br>52 L. T. 17, 49 J. P. 357 ..                   | 374                     |
| <i>Adam v. Townend &amp; Co.</i> .. .. .                                                     | 14 Q. B. D. 103 .. .. .                                                            | 340                     |
| <i>Adame's Trusts, Re</i> .. .. .                                                            | 54 L. J. Ch. 878, 53 L. T. 198, 33<br>W. R. 834, W. N. 1885, p. 153 ..             | 180                     |
| <i>Adams, Ex parte. Dallow (or Dallou) v.<br/>Garrold</i> .. .. .                            | 14 Q. B. D. 543, 54 L. J. Q. B. 76,<br>52 L. T. 240, 33 W. R. 219 ..               | 449                     |
| <i>Adams and Kensington Vestry, Re</i> ..                                                    | 27 Ch. D. 394, 54 L. J. Ch. 87, 51<br>L. T. 382, 32 W. R. 883                      | 212, 516                |
| <i>Adams v. Ford (or Fox)</i> .. .. .                                                        | 55 L. J. Q. B. 13, 34 W. R. 64,<br>49 J. P. 711 .. .. .                            | 280                     |
| <i>Addington (falsely called Mellor) v. Mellor</i> ..                                        | 10 P. D. 178, 54 L. J. P. 31, 33<br>W. R. 232 .. .. .                              | 334                     |
| <i>Agnew v. Murray. Murray v. Scott. Brime-<br/>low v. Murray</i> .. .. .                    | 9 App. Cns. 519, 53 L. J. Ch. 745,<br>51 L. T. 462, 33 W. R. 173 ..                | 61                      |
| <i>Agnew v. Usher</i> .. .. .                                                                | 14 Q. B. D. 78, 54 L. J. Q. B. 371,<br>51 L. T. 576, 752, 33 W. R. 126             | 362                     |
| <i>Ahier v. Ahier</i> .. .. .                                                                | 10 P. D. 110, 54 L. J. P. 70, 52<br>L. T. 744, 33 W. R. 770 ..                     | 333                     |
| <i>Ainslie, Re. Swinburn (or Swinburne) v.<br/>Ainslie</i> .. .. .                           | 28 Ch. D. 89, 30 Ch. D. 485, 54<br>L. J. Ch. 5, 33 W. R. 195, 910                  | 417                     |
| <i>Ainslie, Re. Ainslie v. Ainslie</i> .. ..                                                 | 54 L. J. Ch. 8, 51 L. T. 780, 33<br>W. R. 148 .. .. .                              | 459                     |
| <i>Alderton v. Archer</i> .. .. .                                                            | 14 Q. B. D. 1, 54 L. J. Q. B. 12,<br>51 L. T. 661, 33 W. R. 136 ..                 | 245                     |
| <i>Alexander v. Calder. Re Wilson</i> .. ..                                                  | 28 Ch. D. 457, 54 L. J. Ch. 487,<br>33 W. R. 579 .. .. .                           | 315                     |
| — <i>v. Cross. Re Cousins</i> .. .. .                                                        | 30 Ch. D. 203 .. .. .                                                              | 516                     |
| <i>Alison v. Charlesworth</i> .. .. .                                                        | 49 J. P. 294 .. .. .                                                               | 232                     |
| <i>Allam, Ex parte. Re Munday</i> .. .. .                                                    | 14 Q. B. D. 43, 33 W. R. 231 ..                                                    | 54                      |
| <i>Allan v. Regent's Canal, &amp;c., Co.</i> .. ..                                           | 54 L. J. Q. B. 201 .. .. .                                                         | 91                      |
| <i>Allen v. Allen</i> .. .. .                                                                | 10 P. D. 187, 54 L. J. P. 77 ..                                                    | 334                     |
| — <i>v. Ayres</i> .. .. .                                                                    | W. N. 1884, p. 242 .. .. .                                                         | 226                     |

| Name of Case.                                                                | Reference to Reports.                                                                                   | Column of Digest. |
|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|-------------------|
| Allen <i>v.</i> Norris. Re Norris .. .. .                                    | 27 Ch. D. 333, 53 L. J. Ch. 913, }<br>51 L. T. 593, 32 W. R. 955 .. }                                   | 473               |
| — <i>v.</i> Taylor. Re Gyhon .. .. .                                         | 29 Ch. D. 834, 54 L. J. Ch. 945, }<br>53 L. T. 539, 33 W. R. 620 .. }                                   | 304               |
| Alliance Society, Re .. .. .                                                 | 28 Ch. D. 559, 54 L. J. Ch. 540, }<br>52 L. T. 695 .. .. . }                                            | 89                |
| Allsop's Estate, Re. Gell <i>v.</i> Carver ..                                | W. N. 1884, p. 196 .. .. .                                                                              | 74                |
| Altrincham Union Assessment Committee.<br>Cheshire Lines Committee .. .. .   | 15 Q. B. D. 597 .. .. .                                                                                 | 295               |
| Anderson, Ex parte. Re Tollemache ..                                         | 14 Q. B. D. 606, 54 L. J. Q. B. 383, }<br>52 L. T. 786 .. .. . }                                        | 38, 147           |
| Anderson's Trade-mark, Re .. .. .                                            | 54 L. J. Ch. 1084 .. .. .                                                                               | 463               |
| Anderson, Tritton & Co. <i>v.</i> Ocean Steamship<br>Co. .. .. .             | 10 App. Cas. 107, 54 L. J. Q. B. }<br>192, 52 L. T. 441, 33 W. R. 433, }<br>5 Asp. M. C. 202 .. .. . }  | 433               |
| Andrew <i>v.</i> Williams ( <i>or</i> Williames). Re<br>Williams .. .. .     | 52 L. T. 41, W. N. 1884, p. 242, }<br>W. N. 1885, p. 158 .. .. . }                                      | 498               |
| Andrews, Ex parte. Re Andrews .. ..                                          | 15 Q. B. D. 335, 54 L. J. Q. B. 572 }<br>30 Ch. D. 159, 54 L. J. Ch. 1049, }                            | 41                |
| — <i>Re.</i> Edwards <i>v.</i> Dewar .. .. .                                 | 53 L. T. 422, 33 W. R. 575 .. ..                                                                        | 186               |
| Angell, Re. Ex parte Shoolbred .. ..                                         | 14 Q. B. D. 298, 54 L. J. Q. B. 87, }<br>51 L. T. 678, 33 W. R. 202 .. }                                | 27                |
| Angier <i>v.</i> Stewart .. .. .                                             | 1 C. & E. 357 .. .. .                                                                                   | 425               |
| Anglo-Maltese Hydraulic Dock Co., Re ..                                      | 54 L. J. Ch. 730, 52 L. T. 841, 33 }<br>W. R. 652, W. N. 1885, 84 .. }                                  | 450               |
| Anson, Ex parte. Re Mutual Aid Permanent<br>Benefit Building Society .. .. . | 29 Ch. D. 182, 30 Ch. D. 434, 54 }<br>L. J. Ch. 493, 52 L. T. 406, 33 }<br>W. R. 575, 34 W. R. 143 .. } | 63                |
| Anstice, Re. Anstice <i>v.</i> Hibbell ( <i>or</i> Hibell)                   | 54 L. J. Ch. 1104, 52 L. T. 572, 33 }<br>W. R. 557 .. .. . }                                            | 350               |
| Appleton, Re. Barber <i>v.</i> Tebbit .. ..                                  | 29 Ch. D. 893, 54 L. J. Ch. 954, }<br>52 L. T. 906, 49 J. P. 708 .. }                                   | 524               |
| Arabin's Trusts, Re .. .. .                                                  | 52 L. T. 728, W. N. 1885, p. 90 ..                                                                      | 402               |
| Arden <i>v.</i> Arden .. .. .                                                | 29 Ch. D. 702, 54 L. J. Ch. 655, }<br>52 L. T. 610, 33 W. R. 593 .. }                                   | 265               |
| — <i>v.</i> Deacon, <i>or</i> Arden, Ex parte. Re<br>Arden .. .. .           | 14 Q. B. D. 121, 51 L. T. 712, 33 }<br>W. R. 460 .. .. . }                                              | 23, 42            |
| Armstrong <i>v.</i> Royal Exchange Shipping Co.<br>Mellor <i>v.</i> do. .... | W. N. 1885, 172 .. .. .                                                                                 | 312               |
| Ashbury <i>v.</i> Watson .. .. .                                             | 28 Ch. D. 56, 30 Ch. D. 376, 54 }<br>L. J. 12, 985, 51 L. T. 766, 33 }<br>W. R. 882 .. .. . }           | 91                |
| Ashby <i>v.</i> Day .. .. .                                                  | 54 L. J. Ch. 935, 52 L. T. 723, 33 }<br>W. R. 631 .. .. . }                                             | 367               |
| Ashmore, Re. Ashmore <i>v.</i> Paley .. ..                                   | W. N. 1885, p. 154 .. .. .                                                                              | 8                 |
| Aspey <i>v.</i> Jones .. .. .                                                | 54 L. J. Q. B. 98, 33 W. R. 217, }<br>48 J. P. 613 .. .. . }                                            | 117               |
| Asphaltic Wood Pavement Co., Re. Ex parte<br>Lee and Chapman .. .. .         | 30 Ch. D. 216, 54 L. J. Ch. 460, }<br>53 L. T. 65, 33 W. R. 513 .. }                                    | 105               |
| Asquith <i>v.</i> Asquith .. .. .                                            | W. N. 1885, p. 31 .. .. .                                                                               | 448               |
| Aste <i>v.</i> Stumore, Weston & Co. .. ..                                   | 1 C. & E. 319 .. .. .                                                                                   | 422               |
| Atherley <i>v.</i> Burnett ( <i>or</i> Barnett) .. ..                        | 52 L. T. 736, 33 W. R. 779, W. N. }<br>1885, 70 .. .. . }                                               | 264               |
| Atkinson, Re. Atkinson <i>v.</i> Bruce .. ..                                 | 30 Ch. D. 605, 55 L. J. Ch. 49, }<br>53 L. T. 258, 33 W. R. 899 .. }                                    | 406               |
| — <i>v.</i> Collard .. .. .                                                  | 55 L. J. Q. B. 18, 34 W. R. 75, 50 }<br>J. P. 23, W. N. 1885, p. 197 .. }                               | 281               |
| Attenborough's Case. Re Cunningham & Co.                                     | 28 Ch. D. 682, 54 L. J. Ch. 448, }<br>52 L. T. 214, 33 W. R. 387 .. }                                   | 57                |

| Name of Case.                                                 | Reference to Reports.                                                                           | Column of Digest. |
|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------|
| Att.-Gen. v. Ailesbury (Marquis of) .. ..                     | 14 Q. B. D. 895, 54 L. J. Q. B. 324, 52 L. T. 809, 33 W. R. 731 ..                              | 389               |
| ——— v. Bradlaugh .. ..                                        | 14 Q. B. D. 667, 54 L. J. Q. B. 205, 52 L. T. 589, 33 W. R. 673, 49 J. P. 500, 1 C. & E. 440 .. | 147, 277, 311     |
| ——— v. Horner .. ..                                           | 14 Q. B. D. 245, 54 L. J. Q. B. 227, 33 W. R. 93, 49 J. P. 326, W. N. 1885, 222 ..              | 238               |
| ——— for Quebec v. Reed .. ..                                  | 10 App. Cas. 141, 54 L. J. P. C. 12, 52 L. T. 393, 33 W. R. 618 ..                              | 75                |
| ——— of Duchy of Lancaster v. Devonshire (Duke) .. ..          | 14 Q. B. D. 195, 54 L. J. Q. B. 271, 33 W. R. 367 ..                                            | 136               |
| Austerberry v. Oldham (Mayor of) .. ..                        | 29 Ch. D. 750, 53 L. T. 543, 33 W. R. 807, 49 J. P. 532 ..                                      | 121, 173          |
| Ayling v. Mercer .. ..                                        | W. N. 1885, p. 166 ..                                                                           | 59, 261           |
| B.                                                            |                                                                                                 |                   |
| Backhouse v. Alcock .. ..                                     | 28 Ch. D. 669, 54 L. J. Ch. 842, 52 L. T. 342, 33 W. R. 407 ..                                  | 335               |
| Bacon v. Ford. Re Lord Kensington .. ..                       | 29 Ch. D. 527, 54 L. J. Ch. 1085, 53 L. T. 19, 33 W. R. 689 ..                                  | 200               |
| Badische Anilin und Soda Fabrik v. Levinstein .. ..           | 24 Ch. D. 156, 29 Ch. D. 366, 52 L. J. Ch. 704, 48 L. T. 822, 31 W. R. 913 ..                   | 288               |
| Bailey v. Badham .. ..                                        | 30 Ch. D. 84, 54 L. J. Ch. 1067, 53 L. T. 13, 33 W. R. 770, 49 J. P. 660 ..                     | 461               |
| Baines v. Wright .. ..                                        | 15 Q. B. D. 102, 53 L. T. 295, W. N. 1885, 213 ..                                               | 42                |
| Baker, Re. Connell v. Baker .. ..                             | 29 Ch. D. 711, 54 L. J. Ch. 844, 52 L. T. 421 ..                                                | 335               |
| ——— v. Monmouth Town Clerk .. ..                              | 34 W. R. 64, 49 J. P. 776 ..                                                                    | 278               |
| Baldry v. Bates .. ..                                         | 52 L. T. 620 ..                                                                                 | 393               |
| Ballard v. Tomlinson .. ..                                    | 29 Ch. D. 115, 54 L. J. Ch. 127, 454, 52 L. T. 942, 33 W. R. 533, 49 J. P. 692 ..               | 499               |
| Banbury & Cheltenham, &c., Railway Co. v. Daniel .. ..        | 54 L. J. Ch. 265, 33 W. R. 321, W. N. 1884, p. 243 ..                                           | 59                |
| Bankart (or Rankart), Ex parte. Re Blake-way and Thomas .. .. | 52 L. T. 630, W. N. 1885, p. 64 ..                                                              | 455               |
| Banks v. Mansell. Tanner v. Carter (or Castor) .. ..          | 55 L. J. Q. B. 27, 34 W. R. 41 ..                                                               | 281               |
| Barber v. Tebbit. Re Appleton .. ..                           | 29 Ch. D. 893, 54 L. J. Ch. 954, 52 L. T. 906, 49 J. P. 708 ..                                  | 524               |
| Barker, Re .. ..                                              | W. N. 1884, p. 237 ..                                                                           | 316               |
| ——— v. Lavery .. ..                                           | 14 Q. B. D. 769, 54 L. J. Q. B. 241, 33 W. R. 770 ..                                            | 355               |
| Barker's Trade-mark, Re .. ..                                 | 53 L. T. 23 ..                                                                                  | 467               |
| Barlow v. Kensington Vestry .. ..                             | 27 Ch. D. 362, 53 L. J. Ch. 899, 52 L. T. 155, 32 W. R. 966 ..                                  | 250               |
| ——— v. Teal .. ..                                             | 15 Q. B. D. 403, 501, 54 L. J. Q. B. 400, 564, 53 L. T. 52, 34 W. R. 54, 49 J. P. 423 ..        | 217               |
| Barnes v. Southsea Railway Co. .. ..                          | 27 Ch. D. 536, 51 L. T. 762, 32 W. R. 976 ..                                                    | 223               |
| Barnett, Re. Ex parte Reynolds .. ..                          | 15 Q. B. D. 169, 54 L. J. Q. B. 354, 53 L. T. 448, 33 W. R. 715 ..                              | 24, 32            |

| Name of Case.                                                                                   | Reference to Reports.                                                                  | Column of Digest. |
|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------|
| Barney v. United Telephone Co. .. .. {                                                          | 23 Ch. D. 394, 52 L. T. 573, 33 W. R. 576 .. .. {                                      | 286               |
| Barrett, Re. Barrett v. Barrett .. .. {                                                         | W. N. 1884, p. 224 .. .. {                                                             | 153               |
| Barron v. Ehlers, Seel and Co. .. .. {                                                          | 1 C. & E. 432 .. .. {                                                                  | 45                |
| Barrow v. Dyster .. .. {                                                                        | 13 Q. B. D. 635, 51 L. T. 573, 33 W. R. 199 .. .. {                                    | 364               |
| —— v. Smith .. .. {                                                                             | 52 L. T. 798, 33 W. R. 743, W. N. 1885, p. 136 .. .. {                                 | 256               |
| —— Mutual Ship Insurance Co. v. Ashburner .. .. {                                               | 54 L. J. Q. B. 377, 52 L. T. 898 .. .. {                                               | 196               |
| Barter, Ex parte. Ex parte Black. Re Walker .. .. {                                             | 26 Ch. D. 510, 53 L. J. Ch. 802, 51 L. T. 811, 32 W. R. 809 .. .. {                    | 40                |
| Basan, Ex parte. Re Foster .. .. {                                                              | W. N. 1885, p. 12 .. .. {                                                              | 20                |
| Batten v. Wedgwood Coal and Iron Co. .. .. {                                                    | 28 Ch. D. 317, 54 L. J. Ch. 686, 52 L. T. 212, 33 W. R. 303 .. .. {                    | 83                |
| Bayly v. Went .. .. {                                                                           | 51 L. T. 764, W. N. 1884, p. 197 .. .. {                                               | 207               |
| Baynton v. Collins .. .. {                                                                      | 27 Ch. D. 604, 53 L. J. Ch. 1112, 51 L. T. 681, 33 W. R. 41 .. .. {                    | 179               |
| Beavan, Re. Beavan v. Beavan .. .. {                                                            | 53 L. T. 245 .. .. {                                                                   | 517               |
| Bedson's Trusts, Re .. .. {                                                                     | 28 Ch. D. 523, 54 L. J. Ch. 644, 52 L. T. 554, 33 W. R. 386 .. .. {                    | 509               |
| "Beeswing," The. Parr v. "Beeswing" (owners of) .. .. {                                         | 10 P. D. 18, 54 L. J. P. 7, 51 L. T. 883, 33 W. R. 319, 5 Asp. M. C. 335 .. .. {       | 311               |
| "Bellcairn," The .. .. {                                                                        | 10 P. D. 161, 54 L. J. P. 88, 34 W. R. 55 .. .. {                                      | 306               |
| Benn, Re. Benn v. Benn .. .. {                                                                  | 29 Ch. D. 839, 53 L. T. 240, 34 W. R. 6 .. .. {                                        | 519               |
| Bentley, Re. Wade v. Wilson .. .. {                                                             | 54 L. J. Ch. 782, 33 W. R. 610 .. .. {                                                 | 403               |
| Benwell, Ex parte. Re Hutton .. .. {                                                            | 14 Q. B. D. 301, 54 L. J. Q. B. 53, 51 L. T. 677, 33 W. R. 242 .. .. {                 | 24                |
| Berkley v. Thompson .. .. {                                                                     | 10 App. Cas. 45, 54 L. J. M. C. 57, 52 L. T. 1, 33 W. R. 525, 49 J. P. 276 .. .. {     | 46                |
| "Beryl," The .. .. {                                                                            | 9 P. D. 137, 53 L. J. P. 75, 51 L. T. 554, 33 W. R. 191, 5 Asp. M. C. 193, 321 .. .. { | 431               |
| "Beta," The. The "Peter Graham" .. .. {                                                         | 9 P. D. 134, 51 L. T. 154, 33 W. R. 190 .. .. {                                        | 429               |
| Bethlehem and Bridewell Hospitals, Ex parte .. .. {                                             | 30 Ch. D. 541, 54 L. J. Ch. 1143, 53 L. T. 558 .. .. {                                 | 219               |
| Bice v. Jarvis .. .. {                                                                          | 49 J. P. 264 .. .. {                                                                   | 314               |
| Bidder v. Bridges (No. 2) .. .. {                                                               | 29 Ch. D. 29, 54 L. J. Ch. 798, 51 L. T. 818, 52 L. T. 455, 33 W. R. 272, 792 .. .. {  | 329               |
| Billington v. Cyples .. .. {                                                                    | 52 L. T. 854, 49 J. P. 582 .. .. {                                                     | 47                |
| Birch, Re. Roe v. Birch .. .. {                                                                 | 27 Ch. D. 622, 54 L. J. Ch. 119, 51 L. T. 777, 33 W. R. 72 .. .. {                     | 160               |
| Bird v. Eggleton. Bird v. Ponsford .. .. {                                                      | 29 Ch. D. 1012, 54 L. J. Ch. 819, 53 L. T. 87, 33 W. R. 774, 49 J. P. 644 .. .. {      | 221               |
| Bird v. Greville (Lord) .. .. {                                                                 | 1 C. & E. 317 .. .. {                                                                  | 210               |
| Birkenhead (Mayor) v. London and North Western Railway Co. and Great Western Railway Co. .... { | 15 Q. B. D. 572, 55 L. J. Q. B. 48, 49 J. P. 135 .. .. {                               | 219               |
| Birmingham (Mayor), Ex parte. Re National Arms .... Co. .... {                                  | 28 Ch. D. 474, 54 L. J. Ch. 673, 52 L. T. 237, 33 W. R. 585, 49 J. P. 90 .. .. {       | 88                |
| Birmingham and Lichfield, &c., Railway Co., Re .. .. {                                          | 28 Ch. D. 652, 54 L. J. Ch. 580, 52 L. T. 729, 33 W. R. 517 .. .. {                    | 375               |

| Name of Case.                                                                  | Reference to Reports.                                                                    | Column<br>of<br>Digest. |
|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|-------------------------|
| Bissell v. Fox .. .. .                                                         | 51 L. T. 663, 53 L. T. 193, 1 C. & E. 395 ..                                             | 19                      |
| Blachford, Re. Blachford v. Worsley ..                                         | 27 Ch. D. 676, 54 L. J. Ch. 215, 33 W. R. 11 ..                                          | 227                     |
| Black, Ex parte. Ex parte Barter, Re Walker ..                                 | 26 Ch. D. 510, 53 L. J. Ch. 802, 51 L. T. 811, 32 W. R. 809 ..                           | 40                      |
| Blackburn and District Benefit Building Society v. Cunliffe, Brooks and Co. .. | 29 Ch. D. 902, 54 L. J. Ch. 1091 ..                                                      | 63                      |
| Blackie v. Osmaston .. .. .                                                    | 28 Ch. D. 119, 54 L. J. Ch. 473, 52 L. T. 6, 33 W. R. 158 ..                             | 350                     |
| Blair v. Stock .. .. .                                                         | 52 L. T. 123 ..                                                                          | 470                     |
| Blake v. Harvey .. .. .                                                        | 29 Ch. D. 827, 53 L. T. 541, 33 W. R. 602 ..                                             | 341                     |
| — v. Hummel .. .. .                                                            | 51 L. T. 430, 1 C. & E. 345 ..                                                           | 443                     |
| — Re. Jones (or Pughe-Jones) v. Blake ..                                       | 29 Ch. D. 913, 54 L. J. Ch. 880, 53 L. T. 302, 33 W. R. 886 ..                           | 315, 478                |
| Blakeway and Thomas, Re. Ex parte Bankart (or Rankart) .. .. .                 | 52 L. T. 630, W. N. 1885, p. 64 ..                                                       | 455                     |
| Blashill v. Chambers .. .. .                                                   | 14 Q. B. D. 479, 53 L. T. 38, 49 J. P. 388 ..                                            | 251                     |
| Blease, Ex parte. Re Blinkhorn .. .. .                                         | 14 Q. B. D. 123, 33 W. R. 432 ..                                                         | 23                      |
| "Blenheim," The .. .. .                                                        | 10 P. D. 167, 54 L. J. P. 81, 34 W. R. 154 ..                                            | 427                     |
| Blenkarn (or Blenkarn) v. Longstaff (or Longstaffe) .. .. .                    | 54 L. J. Ch. 516, 52 L. T. 681, W. N. 1884, p. 215 ..                                    | 336                     |
| Blinkorn, Re. Ex parte Blease .. .. .                                          | 14 Q. B. D. 123, 33 W. R. 432 ..                                                         | 23                      |
| Blockley, Re. Blockley v. Blockley .. .. .                                     | 29 Ch. D. 250, 54 L. J. Ch. 722, 33 W. R. 777 ..                                         | 7                       |
| Blosse (or Lynch) v. Wheatley .. .. .                                          | 14 Q. B. D. 504, 54 L. J. Q. B. 289, 53 L. T. 49, 1 Colt. 364 ..                         | 280                     |
| Board of Trade, Ex parte. Re Chudley ..                                        | 14 Q. B. D. 402, 33 W. R. 708 ..                                                         | 43                      |
| — Re Harvey .. .. .                                                            | W. N. 1884, p. 245 ..                                                                    | 43                      |
| — Turquand, Ex parte. Re Parker .. .. .                                        | 14 Q. B. D. 407, 15 Q. B. D. 196, 54 L. J. Q. B. 372, 52 L. T. 185, 670, 33 W. R. 262 .. | 33                      |
| — Re Taylor .. .. .                                                            | 51 L. T. 711, W. N. 1884, p. 219 ..                                                      | 33                      |
| Boddington v. Rees .. .. .                                                     | 52 L. T. 209 ..                                                                          | 351                     |
| Bollen v. Southall .. .. .                                                     | 15 Q. B. D. 461, 54 L. J. Q. B. 589, 34 W. R. 44, 49 J. P. 119, 1 Colt. 368 ..           | 279                     |
| Bolton Estates Act, Re .. .. .                                                 | 52 L. T. 723, W. N. 1885, p. 90 ..                                                       | 404                     |
| Bolton, Re. Brown v. Bolton .. .. .                                            | 53 L. T. 25, W. N. 1885, p. 128 ..                                                       | 508                     |
| Bonham, Ex parte. Re Tollemache .. .. .                                        | 14 Q. B. D. 604, 54 L. J. Q. B. 388, 52 L. T. 17, 33 W. R. 628 ..                        | 38                      |
| Booth v. Smith (No. 2) .. .. .                                                 | 14 Q. B. D. 318, 54 L. J. Q. B. 119, 51 L. T. 742, 33 W. R. 142 ..                       | 4                       |
| Borneman v. Wilson .. .. .                                                     | 28 Ch. D. 53, 54 L. J. Ch. 631, 51 L. T. 728, 33 W. R. 141 ..                            | 346                     |
| Borthwick v. Ransford .. .. .                                                  | 28 Ch. D. 79, 54 L. J. Ch. 569, 33 W. R. 161 ..                                          | 317                     |
| Boswell v. Coaks .. .. .                                                       | 27 Ch. D. 424, 54 L. J. Ch. 347, 51 L. T. 242, 33 W. R. 376 ..                           | 163                     |
| Bouch, Re. Sproule v. Bouch .. .. .                                            | 29 Ch. D. 635, 54 L. J. Ch. 665, 52 L. T. 366, 33 W. R. 621 ..                           | 156                     |
| Bourne v. London and County Land and Building Co. .. .. .                      | W. N. 1885, p. 109 ..                                                                    | 483                     |
| Bournemouth Commissioners v. Watts ..                                          | 14 Q. B. D. 87, 54 L. J. Q. B. 93, 51 L. T. 823, 33 W. R. 280, 49 J. P. 102 ..           | 369                     |

| Name of Case.                                                                   | Reference to Reports.                                                                                     | Column of Digest. |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|-------------------|
| Bousfield <i>v.</i> Dove. Re Dove .. ..                                         | 27 Ch. D. 687, 53 L. J. Ch. 1099, 33 W. R. 197 .. ..                                                      | 27, 316           |
| Bowden <i>v.</i> Layland. Re Marsden .. ..                                      | 26 Ch. D. 783, 54 L. J. Ch. 640, 51 L. T. 417, 33 W. R. 28 .. ..                                          | 229               |
| Bowen <i>v.</i> Lewis .. ..                                                     | 9 App. Cas. 890, 54 L. J. Q. B. 55, 52 L. T. 189 .. ..                                                    | 521               |
| Bowker <i>v.</i> Evans .. ..                                                    | 15 Q. B. D. 565, 54 L. T. Q. B. 421, 33 W. R. 695 .. ..                                                   | 13                |
| Boxall <i>v.</i> Boxall .. ..                                                   | 27 Ch. D. 220, 53 L. J. Ch. 838, 51 L. T. 771, 32 W. R. 896 .. ..                                         | 6, 414            |
| Boycott, Re .. ..                                                               | 29 Ch. D. 571, 52 L. T. 482, 34 W. R. 26 .. ..                                                            | 444               |
| Boyle, Ex parte. Re Land and Loan Mortgage, &c., Co. of S. Africa .. ..         | 54 L. J. Ch. 550, 52 L. T. 501, 33 W. R. 450, W. N. 1885, p. 59 .. ..                                     | 82                |
| Bradbury, Re. Carter <i>v.</i> Bradbury .. ..                                   | W. N. 1885, 83 .. ..                                                                                      | 301               |
| Bradford <i>v.</i> Young (No. 1) .. ..                                          | 29 Ch. D. 617, 54 L. J. Ch. 96, 53 L. T. 407, 33 W. R. 860 .. ..                                          | 135               |
| ————— (No. 2). Re Falconar's Trusts .. ..                                       | 28 Ch. D. 18, 54 L. J. Ch. 368, 51 L. T. 550, 33 W. R. 159 .. ..                                          | 355               |
| ————— Banking Co. <i>v.</i> Briggs and Co. .. ..                                | 29 Ch. D. 149, 31 Ch. D. 19, 52 L. T. 643, 33 W. R. 730, 887 .. ..                                        | 261               |
| ————— Thursby and Farish .. ..                                                  | 15 Q. B. D. 635, 53 L. J. Q. B. 65, 50 L. T. 170, 32 W. R. 238, 47 J. P. 630 .. ..                        | 311               |
| Braintree Local Board <i>v.</i> Boyton .. ..                                    | 52 L. T. 99, 48 J. P. 582 .. ..                                                                           | 372               |
| Bramlett <i>v.</i> Tees Conservancy Commissioners .. ..                         | 49 J. P. 214 .. ..                                                                                        | 498               |
| Brasnett's Case. Re Norwich Equitable Fire Insurance Co. (No. 1) .. ..          | 54 L. J. Ch. 227, 51 L. T. 318, 53 L. T. 569, 32 W. R. 1010, W. N. 1884, p. 175, W. N. 1885, p. 156 .. .. | 103               |
| Brasnett's Case. Re Norwich Equitable Fire Assurance Co. (No. 2) .. ..          | 51 L. T. 620, 33 W. R. 270, W. N. 1884, p. 223 .. ..                                                      | 316               |
| Brewer <i>v.</i> Brown .. ..                                                    | 28 Ch. D. 309, 54 L. J. Ch. 605 .. ..                                                                     | 483               |
| Bridger <i>v.</i> Savage .. ..                                                  | 15 Q. B. D. 363, 54 L. J. Q. B. 464, 53 L. T. 129, 33 W. R. 891, 49 J. P. 725 .. ..                       | 169               |
| Brierley Hill Local Board <i>v.</i> Pearsall .. ..                              | 9 App. Cas. 595, 54 L. J. Q. B. 25, 51 L. T. 577, 33 W. R. 56, 49 J. P. 84 .. ..                          | 369               |
| Brigg <i>v.</i> Brigg .. ..                                                     | 54 L. J. Ch. 464, 52 L. T. 753, 33 W. R. 454, W. N. 1885, p. 42 .. ..                                     | 410               |
| Bright <i>v.</i> Campbell .. ..                                                 | 54 L. J. Ch. 1077, 53 L. T. 428 .. ..                                                                     | 259               |
| Brightmore, Re. Exparte May .. ..                                               | 14 Q. B. D. 37, 51 L. T. 710, 33 W. R. 598 .. ..                                                          | 41                |
| Brighton Livery Stables Co., Re .. ..                                           | 52 L. T. 745 .. ..                                                                                        | 323               |
| Brimelow <i>v.</i> Murray. Murray <i>v.</i> Scott. Agnew <i>v.</i> Murray .. .. | 9 App. Cas. 519, 53 L. J. Ch. 745, 51 L. T. 462, 33 W. R. 173 .. ..                                       | 61                |
| Brinton <i>v.</i> Lulham. Re Lulham .. ..                                       | 53 L. J. Ch. 928, 53 L. T. 9, 33 W. R. 788 .. ..                                                          | 495               |
| Bristol (Mayor) <i>v.</i> Cox .. ..                                             | 26 Ch. D. 678, 53 L. J. Ch. 1144, 50 L. T. 719, 33 W. R. 255 .. ..                                        | 328               |
| Bristol Waterworks <i>v.</i> Uren .. ..                                         | 15 Q. B. D. 637, 54 L. J. M. C. 97, 52 L. T. 655, 49 J. P. 564 .. ..                                      | 500               |
| "British Commerce," The .. ..                                                   | 9 P. D. 128, 53 L. J. P. 72, 51 L. T. 604, 33 W. R. 200, 5 Asp. M. C. 335 .. ..                           | 427               |
| British Envelope Manufacturing Co., Re .. ..                                    | W. N. 1885, p. 84 .. ..                                                                                   | 99                |
| Broad and Broad, Re .. ..                                                       | 15 Q. B. D. 252, 420, 54 L. J. Q. B. 573, 52 L. T. 819, 888, 33 W. R. 749 .. ..                           | 446               |



| Name of Case.                                                                   | Reference to Reports.                                                                 | Column of Digest. |
|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------|
| Broad, Ex parte. Re Neck .. ..                                                  | 13 Q. B. D. 740, 54 L. J. Q. B. 79, 51 L. T. 388, 32 W. R. 912 ..                     | 49                |
| Broadbent v. Barrow. Re Ovey ..                                                 | 29 Ch. D. 560, 54 L. J. Ch. 752, 52 L. T. 849, 33 W. R. 821 ..                        | 71                |
| Broadwater Estate, Re .. ..                                                     | 54 L. J. Ch. 1104, 33 W. R. 738 ..                                                    | 403               |
| Brooke, Re. Musgrave v. Brooke ..                                               | 26 Ch. D. 792, 54 L. J. Ch. 102, 33 W. R. 211 .. ..                                   | 505               |
| Brooks v. London and North Western Railway Co. .. ..                            | 33 W. R. 167 .. ..                                                                    | 376               |
| Brooks (Cunliffe) and Co. v. Blackburn and District Benefit Building Society .. | 9 App. Cas. 857, 52 L. J. Ch. 376, 52 L. T. 225, 33 W. R. 309 ..                      | 62                |
| Broughton and Plas Power Coal Co. v. Kirkpatrick .. ..                          | 14 Q. B. D. 491, 54 L. J. Q. B. 268, 33 W. R. 278, 49 J. P. 119 ..                    | 387               |
| Brown (Ethel) or Rowe, Re .. ..                                                 | 13 Q. B. D. 614, 51 L. T. 793, 33 W. R. 79 .. ..                                      | 188               |
| Brown v. Bolton. Re Brown .. ..                                                 | 53 L. T. 25, W. N. 1885, p. 128 ..                                                    | 508               |
| Brown v. Great Western Railway Co. ..                                           | 52 L. T. 622 .. ..                                                                    | 271               |
| Brown, Re. Brown v. Brown .. ..                                                 | 29 Ch. D. 889, 54 L. J. Ch. 1134, 52 L. T. 853, 33 W. R. 692 ..                       | 478               |
| Brown, Shipley and Co. v. Kough .. ..                                           | 29 Ch. D. 848, 54 L. J. Ch. 1024, 52 L. T. 878, 34 W. R. 2 ..                         | 51                |
| Brunsdon v. Humphrey .. ..                                                      | 14 Q. B. D. 141, 53 L. J. Q. B. 476, 51 L. T. 529, 32 W. R. 944, 49 J. P. 4 .. ..     | 201               |
| Bryon (or Byron), Re. Drummond v. Leigh ..                                      | 30 Ch. D. 110, 55 L. J. Ch. 30 ..                                                     | 507               |
| Bryson v. Russell .. ..                                                         | 14 Q. B. D. 720, 54 L. J. Q. B. 144, 52 L. T. 208, 33 W. R. 34, 49 J. P. 293 .. ..    | 107               |
| Buccleugh's (Duke) Clitheroe Estate, Re ..                                      | 28 Ch. D. 378, 54 L. J. Ch. 401, 52 L. T. 294, 34 W. R. 169 ..                        | 405               |
| Bucknill v. Morris. Re Morris .. ..                                             | 54 L. J. Ch. 388, 52 L. T. 462, 33 W. R. 445 .. ..                                    | 512               |
| Bullers v. Dickinson .. ..                                                      | 29 Ch. D. 155, 54 L. J. Ch. 776, 52 L. T. 400, 33 W. R. 540 ..                        | 225               |
| Bullock, Ex parte. Re Garnett .. ..                                             | 55 L. J. Q. B. 77, 34 W. R. 79, W. N. 1885, p. 192 .. ..                              | 31                |
| Bunch v. Great Western Railway Co. ..                                           | 34 W. R. 74 .. ..                                                                     | 378               |
| Burgess v. Clark .. ..                                                          | 14 Q. B. D. 735, 33 W. R. 269, 49 J. P. 388 .. ..                                     | 372               |
| — and Cosens v. Gillespie .. ..                                                 | 1 C. & E. 321 .. ..                                                                   | 26, 36            |
| Burnaby v. Equitable Reversionary Interest Society .. ..                        | 28 Ch. D. 416, 54 L. J. Ch. 466, 52 L. T. 350, 33 W. R. 639 ..                        | 200               |
| Burness v. Persian Gulf Steamship Co. ..                                        | 52 L. T. 740 .. ..                                                                    | 427               |
| Burnett v. Great North of Scotland Railway Co. .. ..                            | 10 App. Cas. 147, 54 L. J. Q. B. 531, 53 L. T. 507, 12 C. of S. C. (H. L.) 12 .. ..   | 398               |
| Burry Port & Gwendreath Valley Railway Co., Re .. ..                            | 54 L. J. Ch. 710, 52 L. T. 842, 33 W. R. 741, W. N. 1885, p. 119 ..                   | 85                |
| Bursill v. Tanner .. ..                                                         | 16 Q. B. D. 1, 55 L. J. Q. B. 53, 53 L. T. 445, 34 W. R. 35, W. N. 1885, p. 182 .. .. | 451               |
| Bush, Re. Smith v. Harris .. ..                                                 | W. N. 1885, p. 61 .. ..                                                               | 502               |
| "Bushire," The .. ..                                                            | 52 L. T. 740 .. ..                                                                    | 427               |
| Butler v. Butler .. ..                                                          | 14 Q. B. D. 831, 55 L. J. Q. B. 55, 34 W. R. 132, W. N. 1885, p. 204 ..               | 178               |
| — v. — .. ..                                                                    | 28 Ch. D. 66, 54 L. J. Ch. 197, 52 L. T. 90, 33 W. R. 192 ..                          | 517               |
| Byron, Re (or Bryon). Drummond v. Leigh ..                                      | 30 Ch. D. 110, 55 L. J. Ch. 30 ..                                                     | 507               |

| Name of Case.                                                            | Reference to Reports.                                                                                | Column<br>of<br>Digest. |
|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|-------------------------|
| <b>C.</b>                                                                |                                                                                                      |                         |
| Callaghan, Re. Elliott v. Lambert .. ..                                  | 28 Ch. D. 186, 54 L. J. Ch. 292, }<br>52 L. T. 7, 33 W. R. 157 .. }                                  | 191                     |
| Caloric Engine, &c., Co., Re .. ..                                       | 52 L. T. 846 .. ..                                                                                   | 99                      |
| Campbell, Ex parte. Re Wallace .. ..                                     | 15 Q. B. D. 213, 54 L. J. Q. B. 382, }<br>53 L. T. 208 .. .. }                                       | 25                      |
| Campbell, Re. Ex parte Wolverhampton &<br>taffordshire Banking Co. .. .. | 14 Q. B. D. 32, 33 W. R. 642 .. ..                                                                   | 44                      |
| Canada North Western Land Co., Re ..                                     | W. N. 1885, p. 61 .. ..                                                                              | 93                      |
| Cann v. Cann .. ..                                                       | 51 L. T. 770, 33 W. R. 40 .. ..                                                                      | 475                     |
| Cannock & Rugeley Colliery Co. Ex parte<br>Harrison .. ..                | 28 Ch. D. 363, 54 L. J. Ch. 554, }<br>53 L. T. 189, 32 W. R. 1011 .. }                               | 96                      |
| Cannon v. Smalley (otherwise Cannon) ..                                  | 10 P. D. 96 .. ..                                                                                    | 85                      |
| Cannon's Case .. ..                                                      | 30 Ch. D. 629, 53 L. T. 340, 34 }<br>W. R. 14 .. .. }                                                | 86                      |
| Cape Breton Co., Re .. ..                                                | 29 Ch. D. 795, 54 L. J. Ch. 217, }<br>822, 53 L. T. 181, 33 W. R. 788 }                              | 436                     |
| Cardiff Steamship Co. v. Barwick. The "Raisby"                           | 10 P. D. 114, 54 L. J. P. 65, 53 }<br>L. T. 56, 33 W. R. 938 .. }                                    | 436                     |
| Cardigan v. Curzon-Howe .. ..                                            | 30 Ch. D. 531, 33 W. R. 836, 55 L. }<br>J. Ch. 71 .. .. }                                            | 407                     |
| Cardwell (Viscount) v. Tomlinson .. ..                                   | 54 L. J. Ch. 957, 52 L. T. 746, }<br>33 W. R. 814 .. .. }                                            | 344                     |
| Carlisle City & District Banking Co. v. Thompson                         | 28 Ch. D. 398, 53 L. T. 115 .. ..                                                                    | 64                      |
| Carlton v. Bowcock .. ..                                                 | 51 L. T. 659 .. ..                                                                                   | 216                     |
| Carnac's (or Rivett-Carnac's) Will, Re ..                                | 30 Ch. D. 136, 54 L. J. Ch. 1074, }<br>53 L. T. 81, 33 W. R. 837 .. }                                | 408                     |
| Carpenter, Re. Carpenter v. Disney ..                                    | 51 L. T. 773 .. ..                                                                                   | 140                     |
| Carriage Co-operative Supply Association.<br>Re Roberts' Case .. ..      | 27 Ch. D. 322, 53 L. J. Ch. 1154, }<br>51 L. T. 286, 33 W. R. 411 .. }                               | 85                      |
| Carshore v. North Eastern Railway Co. ..                                 | 29 Ch. D. 344, 54 L. J. Ch. 760, }<br>52 L. T. 232, 33 W. R. 420 .. }                                | 357                     |
| Carson v. Pickersgill .. ..                                              | 14 Q. B. D. 859, 54 L. J. Q. B. 312, }<br>484, 52 L. T. 950, 33 W. R. 589, }<br>49 J. P. 612 .. .. } | 317                     |
| Carter, Re. Carter v. Carter .. ..                                       | 53 L. T. 630, 34 W. R. 57, W. N. }<br>1885, p. 184 .. .. }                                           | 450                     |
| Carter v. Bradbury .. ..                                                 | W. N. 1885, p. 83 .. ..                                                                              | 301                     |
| — v. Molson. Holmes v. Carter .. ..                                      | 10 App. Cas. 664 .. ..                                                                               | 76                      |
| — v. White .. ..                                                         | 25 Ch. D. 666, 54 L. J. Ch. 138, }<br>50 L. T. 670, 32 W. R. 692 .. }                                | 48                      |
| Carthew, Re. Re Paull .. ..                                              | 27 Ch. D. 485, 54 L. J. Ch. 134, }<br>51 L. T. 435, 32 W. R. 940 .. }                                | 446                     |
| Cavendish v. Cavendish .. ..                                             | 30 Ch. D. 227, 53 L. J. Ch. 191, }<br>49 L. T. 626 .. .. }                                           | 515                     |
| Caygill v. Thwaite .. ..                                                 | 33 W. R. 581, 49 J. P. 614 .. ..                                                                     | 164                     |
| Cayley v. Sandycroft Brick, &c., Co. ..                                  | 33 W. R. 577, W. N. 1885, p. 80 ..                                                                   | 331                     |
| Cayzer, Irvine & Co. v. Carron Co. The<br>"Margaret" .. ..               | 9 App. Cas. 873, 54 L. J. P. 18, }<br>52 L. T. 361, 33 W. R. 281, 5 }<br>Asp. M. C. 371 .. .. }      | 431                     |
| Cecil v. Langdon .. ..                                                   | 28 Ch. D. 1, 54 L. J. Ch. 313, 51 }<br>L. T. 618, 33 W. R. 1 .. .. }                                 | 473                     |
| Chadwick v. Ball .. ..                                                   | 14 Q. B. D. 855, 54 L. J. Q. B. 396, }<br>52 L. T. 949 .. .. }                                       | 394                     |
| Chaffers, Re. Ex parte Incorporated Law Society                          | 15 Q. B. D. 467 .. ..                                                                                | 447                     |
| Chapman, Re. Ex parte Edwards .. ..                                      | 13 Q. B. D. 747, 51 L. T. 881, }<br>33 W. R. 268 .. .. }                                             | 44                      |

| Name of Case.                                                           | Reference to Reports.                                                                            | Column of Digest. |
|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------|
| Chapman and Hobbs, Re .. ..                                             | 29 Ch. D. 107, 54 L. J. Ch. 810, 52 L. T. 805, 33 W. R. 703 ..                                   | 112               |
| Chapple, Re. Newton v. Chapman ..                                       | 27 Ch. D. 584, 51 L. T. 748, 33 W. R. 336 ..                                                     | 475               |
| "Charles Jackson," The .. ..                                            | 52 L. T. 631, 5 Asp. M. C. 399 ..                                                                | 305               |
| Charlston (or Charlton) v. Rolleston. Re)                               | 28 Ch. D. 237, 54 L. J. Ch. 233, 51 L. T. 612 ..                                                 | 219               |
| Swinlon, &c., Railway Act. ..                                           | 52 L. T. 722, W. N. 1885, p. 67 ..                                                               | 211               |
| Chester v. Powell. Powell v. Chester ..                                 | 10 P. D. 186, 34 W. R. 65 ..                                                                     | 332               |
| Chichester v. Chichester .. ..                                          | W. N. 1885, p. 90 ..                                                                             | 517               |
| Chilcott, Re. Chilcott v. Chilcott ..                                   | 29 Ch. D. 159, 54 L. J. 624, 52 L. T. 504, 33 W. R. 442 ..                                       | 99                |
| Chillington Iron Co., Re. Ex parte Mansell ..                           | 30 Ch. D. 102, 55 L. J. Ch. 37, 53 L. T. 196, 33 W. R. 869 ..                                    | 404               |
| Cholmondeley's (Marquis) Settled Estates, Re)                           | 53 L. T. 337, 34 W. R. 60, W. N. 1885, p. 164 ..                                                 | 462               |
| Chorlton & Dugdale's Trade Mark, Re ..                                  | 52 L. T. 75 ..                                                                                   | 444               |
| Chowne, Re .. ..                                                        | 10 P. D. 141, 54 L. J. P. 84, 53 L. T. 612 ..                                                    | 308               |
| "Christianaborg," The .. ..                                             | 30 Ch. D. 544, 54 L. J. Ch. 1164, 53 L. T. 530, 34 W. R. 8 ..                                    | 74                |
| Christmas, Re. Martin v. Lacon ..                                       | 14 Q. B. D. 402, 33 W. R. 708 ..                                                                 | 43                |
| Chudley, Re. Ex parte Board of Trade ..                                 | 53 L. T. 60 ..                                                                                   | 429               |
| "Chusan," The .. ..                                                     | 51 L. T. 907, 5 Asp. M. C. 340 ..                                                                | 305               |
| "City of Lucknow," The .. ..                                            | 27 Ch. D. 679, 53 L. J. Ch. 792, 51 L. T. 86, 33 W. R. 395 ..                                    | 255               |
| Clapham v. Andrews .. ..                                                | 52 L. T. 260 ..                                                                                  | 269               |
| Clark, Ex parte .. ..                                                   | 13 Q. B. D. 426, 53 L. J. Ch. 1063, 51 L. T. 584, 32 W. R. 775 ..                                | 24                |
| —, —. Re Clark .. ..                                                    | 31 Ch. D. 72, 55 L. J. Ch. 89, 53 L. T. 591, 34 W. R. 70, W. N. 1885, p. 90 ..                   | 513               |
| —, Re. Clark v. Randall .. ..                                           | 54 L. J. Ch. 1080, 52 L. T. 406, 33 W. R. 516, W. N. 1885, p. 59 ..                              | 73                |
| —, —. Husband v. Martin .. ..                                           | 10 P. D. 188, 54 L. J. P. 57, 52 L. T. 234, 33 W. R. 405, 49 J. P. 516 ..                        | 182               |
| — v. Clark .. ..                                                        | 9 App. Cas. 733, 53 L. J. P. C. 99, 51 L. T. 750 ..                                              | 491               |
| — v. — .. ..                                                            | W. N. 1885, p. 108 ..                                                                            | 308               |
| — v. Field (or Monteith) .. ..                                          | 53 L. T. 316 ..                                                                                  | 207               |
| — v. Millwall Dock Co. .. ..                                            | 14 Q. B. D. 92, 54 L. J. M. C. 66, 52 L. T. 136, 33 W. R. 226, 49 J. P. 246, 15 Cox C. C. 666 .. | 482               |
| — v. Reg. .. ..                                                         | 54 L. J. Ch. 259, 52 L. T. 127, 33 W. R. 160, W. N. 1884, p. 225 ..                              | 6                 |
| — v. South Metropolitan Gas Co. ..                                      | 31 Ch. D. 68, 53 L. T. 485, 34 W. R. 69 ..                                                       | 339               |
| — v. Wray .. ..                                                         | 33 W. R. 409 ..                                                                                  | 284               |
| Class v. Marshall .. ..                                                 | 14 Q. B. D. 818, 905, 54 L. J. Q. B. 301, 330, 52 L. T. 537, 33 W. R. 521, 700, 49 J. P. 407 ..  | 243               |
| Claxton v. Lucas & Aird, or Reg. v. Judge of City of London Court .. .. | 54 L. J. Ch. 648, 52 L. T. 641, 32 W. R. 516, W. N. 1885, p. 22 ..                               | 513               |
| Clay, Re. Clay v. Clay .. ..                                            | 54 L. J. Ch. 481, 52 L. T. 556 ..                                                                | 103               |
| Clayton, Ex parte. Re Oriental Bank Corporation .. ..                   | 28 Ch. D. 340, 54 L. J. Ch. 408, 52 L. T. 330, 33 W. R. 435 ..                                   | 285               |
| Cleather v. Twisden .. ..                                               | 27 Ch. D. 631, 54 L. J. Ch. 158, 33 W. R. 40 ..                                                  | 136               |
| Clement v. Cheesman .. ..                                               |                                                                                                  |                   |

| Name of Case.                                               | Reference to Reports.                                                                | Column of Digest. |
|-------------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------|
| Clemson v. Townsend .. .. .                                 | 1 C. & E. 418 .. .. .                                                                | 54                |
| Clerk v. British Linen Co. .. .. .                          | 49 J. P. 825, 12 C. of S. Cas. 1133 .. .. .                                          | 389               |
| Clitheroe (Buccleuch's) Estate, Re .. .. .                  | 28 Ch. D. 378, 54 L. J. Ch. 401, 52 L. T. 294, 34 W. R. 169 .. .. .                  | 405               |
| Close, Ex parte. Re Hall .. .. .                            | 14 Q. B. D. 386, 54 L. J. Q. B. 43, 51 L. T. 795, 33 W. R. 228 .. .. .               | 57                |
| "Clydach," The .. .. .                                      | 51 L. T. 668, 5 Asp. M. C. 336 .. .. .                                               | 431               |
| Coates v. Mackillop. Re Holburne .. .. .                    | 53 L. T. 212 .. .. .                                                                 | 71                |
| Cockerell v. Essex (Earl). Re Johnston (or Johnson) .. .. . | 26 Ch. D. 538, 53 L. J. Ch. 645, 52 L. T. 44, 32 W. R. 634 .. .. .                   | 510               |
| Coleman v. West Middlesex Waterworks Co. .. .. .            | 14 Q. B. D. 529, 54 L. J. M. C. 70, 52 L. T. 578, 33 W. R. 549, 49 J. P. 341 .. .. . | 500               |
| Coles v. Fibbens .. .. .                                    | 52 L. T. 358, 49 J. P. 308 .. .. .                                                   | 369               |
| Collett v. Young .. .. .                                    | 33 W. R. 543 .. .. .                                                                 | 120               |
| "Collingrove," The. The "Numida" .. .. .                    | 10 P. D. 158, 54 L. J. P. 78, 34 W. R. 156 .. .. .                                   | 304               |
| Collins v. Pitts. Re Pitts' Settlement .. .. .              | W. N. 1884, p. 225, 242 .. .. .                                                      | 190               |
| Colonial Bank v. Whinney .. .. .                            | 30 Ch. D. 261, 53 L. T. 272, 33 W. R. 852 .. .. .                                    | 34                |
| Colverson v. Bloomfield .. .. .                             | 29 Ch. D. 341, 54 L. J. Ch. 817, 52 L. T. 478, 33 W. R. 889 .. .. .                  | 15                |
| Commissioner for Railways v. Toohey .. .. .                 | 9 App. Cas. 720, 53 L. J. P. C. 91, 51 L. T. 582 .. .. .                             | 78                |
| Commissioners of French Hock v. Hugo .. .. .                | 10 App. Cas. 336, 54 L. J. P. C. 17, 34 W. R. 18 .. .. .                             | 78                |
| Compton, Re. Norton v. Compton (No. 2) .. .. .              | 30 Ch. D. 15, 54 L. J. Ch. 904, 53 L. T. 410 .. .. .                                 | 158               |
| Coney, Re. Coney v. Bennett .. .. .                         | 29 Ch. D. 993, 54 L. J. Ch. 1130, 52 L. T. 961, 33 W. R. 701 .. .. .                 | 353               |
| Connell v. Baker. Re Baker .. .. .                          | 29 Ch. D. 711, 54 L. J. Ch. 844, 52 L. T. 421 .. .. .                                | 325               |
| Conolan v. Leyland .. .. .                                  | 27 Ch. D. 632, 54 L. J. Ch. 123, 51 L. T. 895 .. .. .                                | 178               |
| Consolidated Telephone Co., Re .. .. .                      | 54 L. J. Ch. 795, 52 L. T. 575, 33 W. R. 408, W. N. 1885, p. 42 .. .. .              | 93                |
| Cookes' Settled Estates, Re. Cookes v. Cookes .. .. .       | W. N. 1885, p. 177 .. .. .                                                           | 407               |
| Cookson v. Swire .. .. .                                    | 9 App. Cas. 653, 54 L. J. Q. B. 249, 52 L. T. 30, 33 W. R. 181 .. .. .               | 56                |
| Cope, Re. D'Auguier v. Cope .. .. .                         | W. N. 1885, p. 154 .. .. .                                                           | 153               |
| Cope v. Cope .. .. .                                        | 52 L. T. 607, W. N. 1885, p. 110 .. .. .                                             | 283               |
| Coppock v. Vaughan. Re Flint .. .. .                        | W. N. 1885, p. 163 .. .. .                                                           | 451               |
| Corbett v. Plowden .. .. .                                  | 25 Ch. D. 678, 54 L. J. Ch. 109, 50 L. T. 740, 32 W. R. 667 .. .. .                  | 259               |
| Cornford v. Elliott. Re Watts .. .. .                       | 29 Ch. D. 947, 54 L. J. Ch. 308, 53 L. T. 426, 33 W. R. 885 .. .. .                  | 73                |
| Cottrell v. Cottrell .. .. .                                | 28 Ch. D. 628, 54 L. J. Ch. 417, 52 L. T. 486, 33 W. R. 361 .. .. .                  | 405               |
| Coulman, Re. Munby v. Ross .. .. .                          | 30 Ch. D. 186, 55 L. J. Ch. 34, 53 L. T. 560 .. .. .                                 | 297               |
| Cousins, Re. Alexander v. Cross .. .. .                     | 30 Ch. D. 203 .. .. .                                                                | 516               |
| Cowan v. Carlill .. .. .                                    | 52 L. T. 431, 33 W. R. 583, W. N. 1885, p. 76 .. .. .                                | 314               |
| Cowell v. Taylor .. .. .                                    | 31 Ch. D. 34, 55 L. J. Ch. 92, 53 L. T. 483, 34 W. R. 24 .. .. .                     | 322               |
| Crabtree v. Robinson .. .. .                                | 15 Q. B. D. 312, 54 L. J. Q. B. 544, 33 W. R. 936 .. .. .                            | 207               |
| Cradock v. Rogers .. .. .                                   | 53 L. J. Ch. 968, 51 L. T. 191, W. N. 1884, p. 166, W. N. 1885, p. 134 .. .. .       | 260               |

| Name of Case.                                                                | Reference to Reports.                                                                                   | Column of Digest. |
|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|-------------------|
| Craven, Ex parte. Ex parte King. Re)                                         | 52 L. T. 299, 714, W. N. 1884, p. 244, W. N. 1885, p. 21 ..                                             | 38                |
| Ingham .. .. .                                                               | 28 Ch. D. 431, 54 L. J. Ch. 652, 52 L. T. 460, 33 W. R. 611, 49 J. P. 598 ..                            | 516               |
| Crawley, Re. Acton v. Crawley ..                                             | 54 L. J. Ch. 506, 33 W. R. 444, W. N. 1885, p. 37 ..                                                    | 100               |
| Crawshaw's & Carter's Case ..                                                | 53 L. T. 419 ..                                                                                         | 101               |
| Credit Co. v. Webster ..                                                     | 54 L. J. Ch. 811, 33 W. R. 819, W. N. 1885, p. 100 ..                                                   | 108               |
| Creed v. Henderson. Re Hudson ..                                             | 14 Q. B. D. 347, 54 L. J. Q. B. 277, 52 L. T. 374, 49 J. P. 356 ..                                      | 216               |
| Croft v. London and County Banking Co. ..                                    | 30 Ch. D. 298, 54 L. J. Ch. 1109, 53 L. T. 603, 33 W. R. 913 ..                                         | 10                |
| Crompton v. Jarratt ..                                                       | 1 C. & E. 348 ..                                                                                        | 120, 216          |
| Cronin v. Rogers ..                                                          | 26 Ch. D. 700, 53 L. J. Ch. 891, 51 L. T. 729, 33 W. R. 60 ..                                           | 287               |
| Cropper v. Smith (No. 2), varied by H. L. See                                | 28 Ch. D. 148, 54 L. J. Ch. 287, 52 L. T. 94, 33 W. R. 338 ..                                           | 288               |
| Smith v. Cropper ..                                                          | W. N. 1885, p. 111 ..                                                                                   | 287               |
| ———— (No. 3) ..                                                              | W. N. 1885, p. 95 ..                                                                                    | 53                |
| ———— (No. 4) ..                                                              | 14 Q. B. D. 966, 54 L. J. Q. B. 316, 52 L. T. 518, 33 W. R. 614 ..                                      | 421               |
| Crosser v. Maxwell ..                                                        | W. N. 1884, p. 204 ..                                                                                   | 484               |
| Crossthwaite (or Crosthwaite), Ex parte. Re)                                 | 9 App. Cas. 857, 54 L. J. Ch. 376, 52 L. T. 225, 33 W. R. 309 ..                                        | 62                |
| Pearce ..                                                                    | 28 Ch. D. 682, 54 L. J. Ch. 448, 52 L. T. 214, 33 W. R. 387 ..                                          | 57                |
| Cumming to Godbolt, Re ..                                                    | 52 L. T. 244, W. N. 1885, 29, 55 ..                                                                     | 186               |
| Cunliffe, Brooks & Co. v. Blackburn and District Benefit Building Society .. | 1 C. & E. 351 ..                                                                                        | 36                |
| Cunningham & Co., Re. Attenborough's Case)                                   |                                                                                                         |                   |
| Curtis, Re. Hawes v. Curtis ..                                               |                                                                                                         |                   |
| Curtis v. Wainbrook Iron Co. ..                                              |                                                                                                         |                   |
| D.                                                                           |                                                                                                         |                   |
| Dale, Re (A. J.). Ex parte Dale (M. L.) ..                                   | 52 L. T. 627, 33 W. R. 476 ..                                                                           | 23                |
| Dale, Re. Ex parte Leicestershire Banking Co. ..                             | 14 Q. B. D. 48, 33 W. R. 354 ..                                                                         | 26                |
| Dallow (or Dallon) v. Garrold. Ex parte)                                     | 14 Q. B. D. 543, 54 L. J. Q. B. 76, 52 L. T. 240, 33 W. R. 219 ..                                       | 449               |
| Adams ..                                                                     | 29 Ch. D. 626, 54 L. J. Ch. 771, 53 L. T. 177, 33 W. R. 685, 49 J. P. 52 ..                             | 490               |
| Dames & Wood's Contract, Re ..                                               | 30 Ch. D. 320, 34 W. R. 125 ..                                                                          | 233               |
| Danby (an alleged lunatic), Re ..                                            | 29 Ch. D. 500, 54 L. J. Ch. 577, 52 L. T. 401, 33 W. R. 559 ..                                          | 302               |
| Danby v. Coutts ..                                                           | 15 Q. B. D. 408, 54 L. J. M. C. 134, 53 L. T. 471, 33 W. R. 905, 49 J. P. 694 ..                        | 58                |
| Daniel v. Whitfield ..                                                       | 53 L. T. 257 ..                                                                                         | 227               |
| Darley v. Tennant ..                                                         | 55 L. J. Q. B. 8, 53 L. T. 588, 34 W. R. 53, W. N. 1885, p. 189 ..                                      | 278               |
| Dashwood v. Ayles ..                                                         | W. N. 1885, p. 154 ..                                                                                   | 153               |
| D'Auquier v. Cope. Re Cope ..                                                | 54 L. J. Ch. 747 ..                                                                                     | 316               |
| Davidson v. Young ..                                                         | W. N. 1885, p. 54 ..                                                                                    | 362               |
| Davies v. Lound ..                                                           | 29 Ch. D. 596, 54 L. J. Ch. 1148, 52 L. T. 472, 53 L. T. 314, 33 W. R. 668, 49 J. P. 536, 50 J. P. 5 .. | 246               |
| ———— v. Makuna ..                                                            | 28 Ch. D. 650, 54 L. J. Ch. 278, 52 L. T. 19, 33 W. R. 211 ..                                           | 257               |
| ———— v. Smith ..                                                             |                                                                                                         |                   |

| Name of Case.                                                 | Reference to Reports.                                                                                                                | Column of Digest. |
|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Davis (Alice), Re. Reg. v. Islington Guardians                | 15 Q. B. D. 95, 339, 54 L. J. M. C. 110, 146, 53 L. T. 327, 49 J. P. 804                                                             | 293               |
| — v. Comitti .. .. .                                          | 54 L. J. Ch. 419, 52 L. T. 539, W. N. 1885, p. 15 .. ..                                                                              | 114               |
| — v. House Improvement Supply Association .. .. .             | W. N. 1885, p. 51 .. .. .                                                                                                            | 83                |
| Dawdy & Hartcup, Re. .. .. .                                  | 15 Q. B. D. 426, 54 L. J. Q. B. 574, 53 L. T. 392 .. .. .                                                                            | 13                |
| Dawes v. Creyke .. .. .                                       | 30 Ch. D. 500, 54 L. J. Ch. 1096, 53 L. T. 292, 33 W. R. 869 ..                                                                      | 409               |
| Dawson v. Fox (or Fox v. Smith) .. ..                         | 14 Q. B. D. 377, 54 L. J. Q. B. 299, 29 Ch. D. 697, 54 L. J. Ch. 769, 52 L. T. 889, 33 W. R. 573, 34 W. R. 81, W. N. 1885, p. 200 .. | 338               |
| Day v. Turnell. Re Higgins .. .. .                            | 30 Ch. D. 169, 55 L. J. Ch. 44, 53 L. T. 145, 33 W. R. 744 ..                                                                        | 390               |
| Deakin v. Lakin. Re Shakspear .. ..                           | 54 L. J. Ch. 694 .. .. .                                                                                                             | 179               |
| Dearing v. Brooks. Re Parker .. ..                            | 14 Q. B. D. 184, 54 L. J. Q. B. 74, 33 W. R. 440 .. .. .                                                                             | 353               |
| Dearle, Ex parte. Re Hastings .. ..                           | 1 C. & E. 438 .. .. .                                                                                                                | 36                |
| Debenham v. King's College, Cambridge ..                      | 55 L. J. Ch. 46, 53 L. T. 522, 34 W. R. 39, W. N. 1885, p. 174 ..                                                                    | 458               |
| De Burgh Lawson, Re. D— v. D— .. ..                           | 29 Ch. D. 351, 54 L. J. Ch. 940, 52 L. T. 457, 33 W. R. 585 ..                                                                       | 141               |
| De la Pole (Lady) v. Dick .. .. .                             | 30 Ch. D. 153, 54 L. J. Ch. 724, 33 W. R. 839 .. .. .                                                                                | 313               |
| Delta Syndicate, Re. Ex parte Forde ..                        | 52 L. T. 512, W. N. 1885, p. 26 ..                                                                                                   | 93                |
| Delves v. Newington .. .. .                                   | 29 Ch. D. 268, 54 L. J. Ch. 532, 52 L. T. 282, 33 W. R. 846, 49 J. P. 548 .. .. .                                                    | 11                |
| De Mora v. Concha .. .. .                                     | 54 L. J. Ch. 45, 51 L. T. 657, 33 W. R. 120, W. N. 1884, p. 206 ..                                                                   | 145               |
| Denne and Secretary of State for War, Re (or S. & D.) .. .. . | W. N. 1885, p. 177 .. .. .                                                                                                           | 441               |
| De Otaduy's Trade-Mark, Re .. .. .                            | 34 W. R. 42 .. .. .                                                                                                                  | 470               |
| De Portugal, Re .. .. .                                       | 27 Ch. D. 710, 54 L. J. Ch. 276, 51 L. T. 319 .. .. .                                                                                | 160               |
| Derby Union Guardians v. Sharratt. Re Webster .. .. .         | 31 Ch. D. 81, 55 L. J. Ch. 73, 53 L. T. 524, 34 W. R. 36, W. N. 1885, p. 184 .. .. .                                                 | 234               |
| De Ros, Re. Hardwicke v. Wilmot .. ..                         | 52 L. T. 609, W. N. 1885, p. 104 ..                                                                                                  | 409               |
| Dessau v. Lewin. Re Michael .. .. .                           | 13 Q. B. D. 766, 51 L. T. 437, 33 W. R. 290 .. .. .                                                                                  | 336               |
| Dever (or Devers), Ex parte. Re Suse (No. 1) .. .. .          | 14 Q. B. D. 611, 54 L. J. Q. B. 390, 53 L. T. 131, 33 W. R. 625 ..                                                                   | 50                |
| — (No. 2) .. .. .                                             | 52 L. T. 161, 49 J. P. 405 .. .. .                                                                                                   | 53                |
| Devonport (Mayor) v. Plymouth Tramways Co.                    | 54 L. J. Ch. 830, 52 L. T. 489, 33 W. R. 497 .. .. .                                                                                 | 454               |
| Dewar, Re. Dewar v. Brooke .. .. .                            | W. N. 1884, p. 199 .. .. .                                                                                                           | 476               |
| Dickinson, Re. Dickinson v. Walker .. ..                      | 28 Ch. D. 291, 29 Ch. D. 331, 54 L. J. Ch. 212, 510, 51 L. T. 891, 52 L. T. 707, 33 W. R. 334, 511                                   | 153               |
| Dickson, Re. Hill v. Grant .. .. .                            | 52 L. T. 494 .. .. .                                                                                                                 | 190               |
| Dimmock, Re. Dimmock v. Dimmock .. ..                         | 52 L. T. 61, 5 Asp. M. C. 347 ..                                                                                                     | 528               |
| "Dione," The .. .. .                                          | 34 W. R. 79 .. .. .                                                                                                                  | 306, 434          |
| District Bank of London, Ex parte. Re Genese                  | 54 L. J. Ch. 964 .. .. .                                                                                                             | 38                |
| Dixon, Re. Dixon v. Smith .. .. .                             | 28 Ch. D. 664, 54 L. J. Ch. 636, 52 L. T. 246, 33 W. R. 409 ..                                                                       | 178               |
| Doble v. Manley .. .. .                                       | 29 Ch. D. 693, 54 L. J. 1121, 53 L. T. 288, 33 W. R. 574 ..                                                                          | 258               |
| Docwra, Re. Docwra v. Faith .. .. .                           |                                                                                                                                      | 487               |

| Name of Case.                                                   | Reference to Reports.                                                                  | Column of Digest. |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------|
| Docwra, Re. Docwra v. Faith. Westwood v. Docwra (No. 1) .. .. . | W. N. 1884, p. 232 .. ..                                                               | 153               |
| Doggett v. Revett. Vollum v. Revett. Re Youngs .. .. .          | 30 Ch. D. 421, 33 W. R. 880 ..                                                         | 152               |
| Donaldson, Re .. .. .                                           | 27 Ch. D. 544, 54 L. J. Ch. 151, 51 L. T. 622 .. ..                                    | 447               |
| "Dordogne," The .. .. .                                         | 10 P. D. 6, 54 L. J. P. 29, 51 L. T. 650, 33 W. R. 360, 5 Asp. M. C. 328 .. ..         | 430               |
| Doré v. Fletcher .. .. .                                        | 34 W. R. 29, W. N. 1885, p. 185 ..                                                     | 520               |
| Douglas, Re. Wood v. Douglas, or Douglas v. Wood .. .. .        | 28 Ch. D. 327, 54 L. J. Ch. 421, 52 L. T. 131, 33 W. R. 390 ..                         | 133               |
| Dove, Re. Bouasfield v. Dove .. ..                              | 27 Ch. D. 687, 53 L. J. Ch. 1099, 33 W. R. 197 .. ..                                   | 27, 316           |
| Dowling v. Stuart. Re Macdonald .. ..                           | W. N. 1885, p. 98 .. ..                                                                | 165               |
| Drage v. Hartopp .. .. .                                        | 28 Ch. D. 414, 54 L. J. Ch. 434, 51 L. T. 902, 33 W. R. 410 ..                         | 345               |
| Drake v. Drake. Re Easley's estate .. ..                        | W. N. 1885, p. 99 .. ..                                                                | 502               |
| Drummond v. Leigh. Re Byron .. ..                               | 30 Ch. D. 110, 55 L. J. Ch. 30 ..                                                      | 507               |
| Drum Slate Quarry Co., Re .. ..                                 | 55 L. J. Ch. 36, 53 L. T. 250 ..                                                       | 86                |
| Dudley, Ex parte. Re a solicitor .. ..                          | 33 W. R. 750, W. N. 1885, p. 138 ..                                                    | 316               |
| Duffett v. McEvoy (or Evay) .. ..                               | 10 App. Cas. 300, 54 L. J. P. C. 25, 52 L. T. 633 .. ..                                | 79                |
| Dunn v. Flood .. .. .                                           | 28 Ch. D. 586, 54 L. J. Ch. 370, 52 L. T. 699, 33 W. R. 315 ..                         | 484               |
| Dunning, Re. Hatherley v. Dunning .. ..                         | 54 L. J. Ch. 900, 53 L. T. 413, 33 W. R. 760 .. ..                                     | 159               |
| Dunning v. Gainsborough (Earl of) .. ..                         | 54 L. J. Ch. 991, 53 L. T. 116, W. N. 1885, p. 110 .. ..                               | 478, 492          |
| Durham v. Durham .. .. .                                        | 10 P. D. 80 .. ..                                                                      | 177               |
| Dyer, Re. Dyer v. Paynter .. .. .                               | 54 L. J. Ch. 1133, 33 W. R. 806 ..                                                     | 282               |
| Dyke v. Stephens (No. 1) .. .. .                                | 30 Ch. D. 189, 55 L. J. Ch. 41, 53 L. T. 561, 33 W. R. 932 ..                          | 326               |
| ————— (No. 2) .. .. .                                           | W. N. 1885, p. 177 .. ..                                                               | 436               |
| Dyson v. Godfray .. .. .                                        | 9 App. Cas. 726, 53 L. J. P. C. 94, 51 L. T. 580 .. ..                                 | 78                |
| ———— v. Greetland Local Board .. ..                             | 13 Q. B. D. 946, 53 L. J. M. C. 106, 48 L. T. 636, 48 J. P. 596 ..                     | 174               |
| E.                                                              |                                                                                        |                   |
| Earle, in the goods of. In the goods of M'Gowan .. .. .         | 10 P. D. 196, 54 L. J. P. 95, 34 W. R. 48 .. ..                                        | 5                 |
| "Earl of Dumfries," The .. .. .                                 | 10 P. D. 31, 54 L. J. P. 7, 51 L. T. 906, 33 W. R. 568, 5 Asp. M. C. 329, n. 342 .. .. | 305               |
| Easley's Estate, Re. Drake v. Drake .. ..                       | W. N. 1885, 99 .. ..                                                                   | 502               |
| Ebersley's Hotel Co., Re .. .. .                                | W. N. 1884, 252 .. ..                                                                  | 357               |
| Ebrard v. Gassier (or Garsier) .. .. .                          | 28 Ch. D. 232, 54 L. J. Ch. 441, 52 L. T. 63, 33 W. R. 287 ..                          | 321               |
| Edell v. Cave (or "E. v. C.") .. ..                             | 54 L. J. Ch. 308, 51 L. T. 621, 33 W. R. 208, W. N. 1884, p. 241 ..                    | 360               |
| Eden v. Weardale Coal and Iron Co. .. ..                        | 28 Ch. D. 333, 54 L. J. Ch. 384, 51 L. T. 726, 33 W. R. 241 ..                         | 357               |
| Edgington v. Fitzmaurice (No. 1) .. ..                          | 29 Ch. D. 459, 53 L. T. 369, 33 W. R. 911 .. ..                                        | 92                |
| ————— (No. 2) .. .. .                                           | 33 W. R. 911 at p. 913, W. N. 1885, 170 .. ..                                          | 318               |

| Name of Case.                                                      | Reference to Reports.                                                                              | Column of Digest. |
|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-------------------|
| Edmed, Re. Pettitt v. Dunn .. ..                                   | W. N. 1885, 152 .. ..                                                                              | 516               |
| Edmonds (or Edmunds) v. Robinson .. ..                             | 29 Ch. D. 170, 54 L. J. Ch. 586, 52 L. T. 339, 33 W. R. 471 .. ..                                  | 284               |
| Edmonton Guardians or Reg. v. St. Mary's Guardians. Re Davis .. .. | 15 Q. B. D. 95, 339, 54 L. J. M. C. 110, 146, 53 L. T. 327, 49 J. P. 804 .. ..                     | 293               |
| Edmunds v. Wallingford .. ..                                       | 14 Q. B. D. 811, 54 L. J. Q. B. 305, 52 L. T. 720, 33 W. R. 647, 49 J. P. 549, 1 C. & E. 334 .. .. | 4                 |
| Edwards, Ex parte. Re Chapman .. ..                                | 13 Q. B. D. 747, 51 L. T. 881, 33 W. R. 268 .. ..                                                  | 44                |
| —————. Re Home .. ..                                               | 54 L. J. Q. B. 447, W. N. 1885, 133 .. ..                                                          | 32                |
| —————. Re Tollemache .. ..                                         | 14 Q. B. D. 415 .. ..                                                                              | 37                |
| —————, Re. Owen v. Edwards .. ..                                   | 33 W. R. 578, W. N. 1885, 74 .. ..                                                                 | 341               |
| ————— v. Dennis. Re Edwards' Trade-mark .. ..                      | 30 Ch. D. 454, 1 C. & E. 428 .. ..                                                                 | 469               |
| ————— v. Dewar .. ..                                               | 30 Ch. D. 159, 54 L. J. Ch. 1049, 53 L. T. 422, 34 W. R. 62 .. ..                                  | 186               |
| ————— v. Falmouth Commissioners. The "Rhosina" .. ..               | 10 P. D. 131, 54 L. J. P. 72, 53 L. T. 30, 33 W. R. 794 .. ..                                      | 433               |
| ————— v. Hope .. ..                                                | 14 Q. B. D. 922, 54 L. J. Q. B. 379, 53 L. T. 69, 33 W. R. 672 .. ..                               | 450               |
| Elliott v. Elliott .. ..                                           | 54 L. J. Ch. 1142 .. ..                                                                            | 349               |
| Elliott v. Hall, or Elliott v. Nailstone Colliery Co. .. ..        | 15 Q. B. D. 315, 54 L. J. Q. B. 518, 34 W. R. 16 .. ..                                             | 272               |
| ————— v. Lambert. Re Callaghan .. ..                               | 28 Ch. D. 186, 54 L. J. Ch. 292, 52 L. T. 7, 33 W. R. 157 .. ..                                    | 191               |
| Ellis v. Rogers .. ..                                              | 29 Ch. D. 661, 50 L. T. 660, 53 L. T. 377 .. ..                                                    | 493               |
| Elsas and Bochs v. Williams .. ..                                  | 54 L. J. Ch. 336, 52 L. T. 39 .. ..                                                                | 340               |
| Elwell v. Jackson .. ..                                            | 1 C. & E. 362 .. ..                                                                                | 19                |
| Emanuel v. Parfitt. Re Tucker .. ..                                | 54 L. J. Ch. 874, 52 L. T. 923, 33 W. R. 932, W. N. 1885, 148 .. ..                                | 180               |
| Emeny or Emery v. Sandes .. ..                                     | 14 Q. B. D. 6, 54 L. J. Q. B. 82, 51 L. T. 641, 33 W. R. 187 .. ..                                 | 318               |
| England v. Shearburn .. ..                                         | 52 L. T. 22, 49 J. P. 86 .. ..                                                                     | 214               |
| Errington v. Morewood. Re Morewood .. ..                           | W. N. 1885, 51 .. ..                                                                               | 304               |
| Escallier v. Escallier .. ..                                       | 10 App. Cas. 312, 54 L. J. P. C. 1 .. ..                                                           | 79                |
| Esdaile v. Payne (No. 1) .. ..                                     | 52 L. T. 530, 33 W. R. 864, W. N. 1885, 20 .. ..                                                   | 460               |
| ————— (No. 2) .. ..                                                | 53 L. T. 21, W. N. 1885, 98 .. ..                                                                  | 461               |
| Etheridge v. Womersley. Re Womersley .. ..                         | 29 Ch. D. 557, 54 L. J. Ch. 965, 53 L. T. 260, 33 W. R. 935 .. ..                                  | 153               |
| "European," The .. ..                                              | 10 P. D. 99, 54 L. J. P. 61, 52 L. T. 868, 33 W. R. 937 .. ..                                      | 429               |
| Evans, Re. Evans v. Evans .. ..                                    | W. N. 1885, p. 152 .. ..                                                                           | 502               |
| Ewing v. Orr-Ewing .. ..                                           | 10 App. Cas. 453 .. ..                                                                             | 396               |
| Exchange Bank of Yarmouth v. Blethen .. ..                         | 10 App. Cas. 293, 54 L. J. P. C. 27, 53 L. T. 537, 33 W. R. 801 .. ..                              | 122               |
| F.                                                                 |                                                                                                    |                   |
| "Fairport," The .. ..                                              | 10 P. D. 13, 54 L. J. P. 3, 52 L. T. 62, 33 W. R. 448, 5 Asp. M. C. 348 .. ..                      | 436               |
| Faithfull, Re. Ex parte Moore .. ..                                | 14 Q. B. D. 627, 54 L. J. Q. B. 190, 52 L. T. 376, 33 W. R. 438 .. ..                              | 20                |
| Falconar's Trusts, Re. Bradford v. Young (No. 2) .. ..             | 28 Ch. D. 18, 54 L. J. Ch. 368, 51 L. T. 550, 33 W. R. 159 .. ..                                   | 355               |



| Name of Case.                                                                     | Reference to Reports.                                                                                                      | Column of Digest. |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------|
| Farrar (or Farrer) v. Lacy, Hartland & Co. (No. 2) .. .. .                        | 28 Ch. D. 482, 54 L. J. Ch. 808, 52 L. T. 38, 33 W. R. 265 ..                                                              | 322               |
| Farrer v. Lacy, Hartland & Co. (No. 1) ..                                         | 25 Ch. D. 636, 31 Ch. D. 42, 53 L. J. Ch. 569, 50 L. T. 121, 53 L. T. 515, 32 W. R. 196, 384; 34 W. R. 22, 48 J. P. 567 .. | 260               |
| — v. Nelson .. .. .                                                               | 15 Q. B. D. 258, 54 L. J. Q. B. 385, 52 L. T. 766, 33 W. R. 800, 49 J. P. 725 ..                                           | 213               |
| Fawcus (Henry). In goods of ..                                                    | 9 P. D. 241, 54 L. J. P. 47, 33 W. R. 323, 48 J. P. 743 ..                                                                 | 334               |
| Fawsitt, Re. Galland v. Burton ..                                                 | 30 Ch. D. 231, 54 L. J. Ch. 1131, 53 L. T. 271, 34 W. R. 26 ..                                                             | 313               |
| Fearon v. Aylesford (Earl) .. ..                                                  | 14 Q. B. D. 792, 54 L. J. Q. B. 33, 52 L. T. 954, 33 W. R. 331, 49 J. P. 596 ..                                            | 182               |
| Fellows v. Thornton .. .. .                                                       | 14 Q. B. D. 335, 54 L. J. Q. B. 279, 52 L. T. 389, 33 W. R. 258 ..                                                         | 314               |
| Fendall v. O'Connell (No. 1) ..                                                   | 52 L. T. 538 ..                                                                                                            | 350               |
| — (No. 2) .. .. .                                                                 | 29 Ch. D. 899, 54 L. J. Ch. 756, 52 L. T. 553, 33 W. R. 619 ..                                                             | 326               |
| Ferns v. Carr .. .. .                                                             | 28 Ch. D. 409, 54 L. J. Ch. 478, 52 L. T. 348, 33 W. R. 363, 49 J. P. 503 ..                                               | 437               |
| Field, Re (a solicitor) .. .. .                                                   | 29 Ch. D. 608, 54 L. J. Ch. 661, 52 L. T. 480, 33 W. R. 504, 553, 49 J. P. 613 ..                                          | 442               |
| — v. White. Re Rowson .. ..                                                       | 29 Ch. D. 358, 54 L. J. Ch. 950, 52 L. T. 825, 33 W. R. 604, 49 J. P. 759 ..                                               | 157               |
| Fisher's Case. Re Southport and West Lancashire Banking Co. .. ..                 | 34 W. R. 49, W. N. 1885, p. 188 ..                                                                                         | 80                |
| Fitzroy Bessemer Steel Co., Re ..                                                 | 50 L. T. 144, 33 W. R. 312 ..                                                                                              | 92                |
| Fleming v. Hardcastle .. .. .                                                     | 52 L. T. 851, 33 W. R. 776, W. N. 1885, 106 ..                                                                             | 442               |
| Fletcher v. Bealey .. .. .                                                        | 28 Ch. D. 688, 54 L. J. Ch. 424, 52 L. T. 541, 33 W. R. 745, W. N. 1885, 120 ..                                            | 275               |
| Flewitt v. Walker .. .. .                                                         | 53 L. T. 287, 33 W. R. 894, W. N. 1885, 151 ..                                                                             | 490               |
| Flint, Re .. .. .                                                                 | 15 Q. B. D. 488, 33 W. R. 936 ..                                                                                           | 14                |
| —, Re. Coppock v. Vaughan ..                                                      | W. N. 1885, 163 ..                                                                                                         | 451               |
| Florence Land and Public Works Co., Re. Nicol's Case. Tufnell and Ponsonby's Case | 29 Ch. D. 421, 52 L. T. 933 ..                                                                                             | 81                |
| Foakes v. Beer .. .. .                                                            | 9 App. Cas. 605, 54 L. J. Q. B. 130, 51 L. T. 833, 33 W. R. 233 ..                                                         | 1                 |
| — v. Webb .. .. .                                                                 | 28 Ch. D. 287, 54 L. J. Ch. 262, 51 L. T. 624, 33 W. R. 249 ..                                                             | 330               |
| Ford v. Barnes .. .. .                                                            | 55 L. J. Q. B. 18, 24; 34 W. R. 75, 50 J. P. 23, W. N. 1885, 197 ..                                                        | 281               |
| — v. Elmsley .. .. .                                                              | 55 L. J. Q. B. 24, 34 W. R. 78 ..                                                                                          | 281               |
| — v. Hoar .. .. .                                                                 | 14 Q. B. D. 507, 54 L. J. Q. B. 286, 53 L. T. 44, 33 W. R. 566, 49 J. P. 103, 1 Colt., 351 ..                              | 280               |
| — v. Miescke .. .. .                                                              | 16 Q. B. D. 57, 55 L. J. Q. B. 79, 53 L. T. 535, 34 W. R. 74 ..                                                            | 362               |
| — v. Shephard (or Sheppard) ..                                                    | 53 L. T. 564, 34 W. R. 63 ..                                                                                               | 362               |
| — v. Smerdon .. .. .                                                              | 49 J. P. 760 ..                                                                                                            | 279               |

| Name of Case.                                             | Reference to Reports.                                                   | Column of Digest. |
|-----------------------------------------------------------|-------------------------------------------------------------------------|-------------------|
| Forde, Ex parte. Re Delta Syndicate ..                    | 30 Ch. D. 153, 54 L. J. Ch. 724, 53 L. T. 559, 33 W. R. 839 ..          | 93                |
| "Foscolino," The .. ..                                    | 52 L. T. 866 .. ..                                                      | 306               |
| Foster, Re. Ex parte Basan .. ..                          | W. N. 1885, 12 .. ..                                                    | 20                |
| Fowke v. Draycott .. ..                                   | 29 Ch. D. 996, 54 L. J. Ch. 977, 52 L. T. 890, 33 W. R. 701 ..          | 414               |
| Fox v. Railway Passengers Assurance Co. ..                | 54 L. J. Q. B. 505, 52 L. T. 549, 672 .. ..                             | 356               |
| — v. Smith (or Dawson v. Fox) .. ..                       | 14 Q. B. D. 377, 54 L. J. Q. B. 299 ..                                  | 338               |
| Foxwell v. Lewis. Re Lewis .. ..                          | 30 Ch. D. 654, 53 L. T. 387, 33 W. R. 150 .. ..                         | 139               |
| French, Re. Miller and Miller, Re. Love v. Hills .. ..    | 54 L. J. Ch. 205, 51 L. T. 853, 33 W. R. 210, W. N. 1884, 234 ..        | 440               |
| — v. Chichester .. ..                                     | 28 Ch. D. 450, n. .. ..                                                 |                   |
| "Friedeberg," The .. ..                                   | 10 P. D. 112, 54 L. J. P. 75, 52 L. T. 837, 33 W. R. 687 ..             | 305               |
| Friedlander, Re. Ex parte Oastler .. ..                   | 13 Q. B. D. 471, 54 L. J. Q. B. 23, 51 L. T. 309, 33 W. R. 126 ..       | 21                |
| Friedlander's Trade-mark, Re .. ..                        | W. N. 1885, 85 .. ..                                                    | 463               |
| Frith v. Cooke .. ..                                      | 52 L. T. 798, 33 W. R. 688, W. N. 1885, 129 .. ..                       | 256               |
| Fry v. Tapson .. ..                                       | 28 Ch. D. 268, 54 L. J. Ch. 224, 51 L. T. 326, 33 W. R. 113 ..          | 476               |
| Furlong v. South London Tramways Co. ..                   | 48 J. P. 329, 1 C. & E. 316 ..                                          | 244               |
| Furness v. Davis .. ..                                    | 51 L. T. 854, 33 W. R. 320, W. N. 1885, 14 .. ..                        | 319               |
| — Railway Co. v. Cumberland Co-operative Society .. ..    | 49 J. P. 292 .. ..                                                      | 379               |
| Futcher v. Saunders .. ..                                 | 49 J. P. 424 .. ..                                                      | 268               |
| G.                                                        |                                                                         |                   |
| G. v. M. (or Gordon v. Merricks) .. ..                    | 10 App. Cas. 171, 53 L. T. 398, 12 C. of S. Cas. (H.L.) 36 .. ..        | 309, 397          |
| Gainsborough (Earl) v. Watcombe Terra Cotta Clay Co. .... | 54 L. J. Ch. 991, 53 L. T. 116, W. N. 1885, 110 .. ..                   | 478, 492          |
| Galland, Re (a solicitor) .. ..                           | 34 W. R. 58, 158, W. N. 1885, 185, 224 .. ..                            | 450               |
| — v. Burton. Re Fawsitt .. ..                             | 30 Ch. D. 231, 54 L. J. Ch. 1131, 53 L. T. 271, 34 W. R. 26 ..          | 313               |
| Gallard v. Hawkins .. ..                                  | 27 Ch. D. 298, 53 L. J. Ch. 834, 51 L. T. 689, 33 W. R. 31 ..           | 114               |
| Games v. Bonnor .. ..                                     | 54 L. J. Ch. 517, 33 W. R. 64 ..                                        | 310, 494          |
| Gandy v. Gandy .. ..                                      | 30 Ch. D. 57, 54 L. J. Ch. 1154, 53 L. T. 306, 33 W. R. 803 ..          | 184               |
| Gard v. Commissioners of Sewers .. ..                     | 28 Ch. D. 486, 54 L. J. Ch. 698, 52 L. T. 827 .. ..                     | 246               |
| Gardner v. Jay .. ..                                      | 29 Ch. D. 50, 54 L. J. Ch. 529, 762, 52 L. T. 181, 395, 33 W. R. 470 .. | 358               |
| — v. Tapling .. ..                                        | 33 W. R. 473 .. ..                                                      | 343               |
| — v. Trechmann .. ..                                      | 15 Q. B. D. 154, 54 L. J. Q. B. 515, 53 L. T. 518 .. ..                 | 424               |
| Garnett, Re. Ex parte Bullock .. ..                       | 55 L. J. Q. B. 77, 34 W. R. 79, W. N. 1885, 192 .. ..                   | 31                |
| Garnham v. Skipper .. ..                                  | 29 Ch. D. 566, 52 L. T. 239 ..                                          | 303               |
| "Garston" (sailing ship) Co. v. Hickie ..                 | 15 Q. B. D. 580 .. ..                                                   | 425               |
| Gaslight and Coke Co. v. Holloway .. ..                   | 52 L. T. 434, 49 J. P. 344 .. ..                                        | 209               |

| Name of Case.                                                   | Reference to Reports.                                                           | Column of Digest. |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------|
| Gaslight and Coke Co. v. Kensington Vestry                      | 15 Q. B. D. 1, 54 L. J. Q. B. 414, 53 L. T. 457, 33 W. R. 892, 1 C. & E. 368 .. | 176               |
| Gedling Rectory, Re .. .. .                                     | 53 L. T. 244, W. N. 1885, 158 ..                                                | 220               |
| Gell v. Carver. Re Allsop's Estate .. ..                        | W. N. 1884, p. 196 ..                                                           | 74                |
| Genese, Re. Ex parte District Bank of London                    | 34 W. R. 79 ..                                                                  | 38                |
| — v. Lascelles .. .. .                                          | 13 Q. B. D. 901, 53 L. J. Q. B. 578, 32 W. R. 794 ..                            | 22                |
| "Gettysburg," The .. .. .                                       | 52 L. T. 60, 5 Asp. M. C. 347 ..                                                | 307               |
| Gibbs v. Layland. Re Marsden .. ..                              | 26 Ch. D. 783, 54 L. J. Ch. 640, 51 L. T. 417, 33 W. R. 28 ..                   | 229               |
| Gibert v. Gonard .. .. .                                        | 54 L. J. Ch. 439, 52 L. T. 54, 33 W. R. 302 ..                                  | 475               |
| Gibson, Re. Quirk v. Quirk .. ..                                | W. N. 1884, 236 ..                                                              | 153               |
| Gilbert, Re. Gilbert v. Hudlestone (or Hudlestone) .. .. .      | 28 Ch. D. 549, 54 L. J. Ch. 751, 52 L. T. 8 ..                                  | 312               |
| Giles v. Nuthall. Re House Improvement Supply Association .. .. | W. N. 1885, 51 ..                                                               | 83                |
| Gillatt and Watts v. Colquhoun .. ..                            | 33 W. R. 258 ..                                                                 | 388               |
| Gillespie, Re. Ex parte Morrison .. ..                          | 14 Q. B. D. 385, 52 L. T. 55, 33 W. R. 751 ..                                   | 23                |
| — Reid and Sons. Ex parte Morrison .. ..                        | 14 Q. B. D. 963, 54 L. J. Q. B. 342, 52 L. T. 692, 33 W. R. 707 ..              | 27, 23            |
| Glamorganshire Banking Co., Re. Morgan's Case .. .. .           | 28 Ch. D. 620, 54 L. J. Ch. 765, 51 L. T. 623, 33 W. R. 209 ..                  | 80                |
| "Glannibanta," The. The "Robert Dickin-son" .. .. .             | 10 P. D. 15, 54 L. J. P. 5, 52 L. T. 55, 33 W. R. 400, 5 Asp. M. C. 341 ..      | 307               |
| Glanville, Re. Ex parte Jenkins. Harris v. Hawker .. .. .       | 33 W. R. 523 ..                                                                 | 21, 27            |
| Glascodine and Carlyle, Re .. ..                                | 52 L. T. 781 ..                                                                 | 444               |
| Glen v. Fulham Overseers .. .. .                                | 14 Q. B. D. 328, 54 L. J. M. C. 9, 51 L. T. 856, 33 W. R. 165, 49 J. P. 519 ..  | 248               |
| "Glenavon" (Owners of) v. "Glenfruin." "Glenfruin," The .. .. . | 10 P. D. 103, 54 L. J. P. 49, 52 L. T. 769, 33 W. R. 826 ..                     | 436               |
| Glenister v. Harding. Re Turner .. ..                           | 29 Ch. D. 985, 54 L. J. Ch. 1089, 53 L. T. 528 ..                               | 147               |
| Gold's and Norton's Contract, Re .. ..                          | 52 L. T. 321, 33 W. R. 333, W. N. 1885, 6 ..                                    | 488               |
| Gooch v. London Banking Association .. ..                       | W. N. 1885, 164 ..                                                              | 99                |
| Good, Ex parte. Re Salkeld .. ..                                | 13 Q. B. D. 731, 54 L. J. Q. B. 96, 51 L. T. 876, 33 W. R. 22 ..                | 29                |
| Goodale v. Bullock. Re Millichamp .. ..                         | 52 L. T. 758, W. N. 1885, 62 ..                                                 | 528               |
| Goodall v. Harding .. .. .                                      | 52 L. T. 126 ..                                                                 | 486               |
| Gooding v. Ealing Local Board .. ..                             | 1 C. & E. 359 ..                                                                | 373               |
| Gordon v. James .. .. .                                         | 30 Ch. D. 249 ..                                                                | 438               |
| Gordon v. Merricks .. .. .                                      | 10 App. Cas. 171, 53 L. T. 398, 12 C. of S. C. (H. L.) 36 ..                    | 309, 397          |
| Graham v. Parsons .. .. .                                       | W. N. 1885, 146 ..                                                              |                   |
| Great Berlin Steamboat Co., Re .. ..                            | 26 Ch. D. 616, 54 L. J. Ch. 68, 51 L. T. 445 ..                                 | 101               |
| — Eastern Railway Co. v. Goldsmid .. ..                         | 9 App. Cas. 927, 54 L. J. Ch. 162, 52 L. T. 270, 33 W. R. 81, 49 J. P. 260 ..   | 237               |
| — Indian Peninsular Railway Co. v. Turnbull .. .. .             | 53 L. T. 325, 33 W. R. 874 ..                                                   | 425               |
| — Northern Railway Co. v. Langrивille Overseers .. .. .         | 14 Q. B. D. 83, 54 L. J. Q. B. 124, 52 L. T. 253, 49 J. P. 54 ..                | 295               |

| Name of Case.                                                             | Reference to Reports.                                                           | Column of Digest. |
|---------------------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------|
| Great Western (Forest of Dean) Coal Consumers Co., Re. Crawshaw's Case .. | 54 L. J. Ch. 506, 33 W. R. 444, W. N. 1885, p. 37 ..                            | 100               |
| ————— Railway Co. v. Bagge ..                                             | 15 Q. B. D. 625, 54 L. J. Q. B. 599, 53 L. T. 225, 34 W. R. 45 ..               | 69                |
| ————— v. Swindon and Cheltenham Railway Co. ..                            | 9 App. Cas. 787, 53 L. J. Ch. 1075, 51 L. T. 798, 32 W. R. 957, 48 J. P. 821 .. | 222               |
| Grébert Borgnis ( <i>or</i> Borgnis) v. Nugent ..                         | 15 Q. B. D. 85, 54 L. J. Q. B. 511, 1 C. & E. 337 ..                            | 129               |
| Green, Re. Green v. Green ..                                              | 26 Ch. D. 16, 54 L. J. Ch. 54, 50 L. T. 513, 32 W. R. 373 ..                    | 449               |
| ———— v. Bennett ..                                                        | 54 L. J. Ch. 85, 50 L. T. 706, 32 W. R. 848 ..                                  | 359               |
| ———— v. Biggs ..                                                          | 52 L. T. 680, W. N. 1885, 128 ..                                                | 255               |
| ———— v. Brand ..                                                          | 1 C. & E. 410 ..                                                                | 168               |
| Greenbank v. Sanderson ..                                                 | 49 J. P. 40 ..                                                                  | 164, 203          |
| Greenwood's Trusts, Re ..                                                 | 27 Ch. D. 359, 54 L. J. Ch. 623, 51 L. T. 283, 33 W. R. 342 ..                  | 480               |
| Griffiths (an infant), Re ..                                              | 29 Ch. D. 248, 54 L. J. Ch. 742, 53 L. T. 262, 33 W. R. 728 ..                  | 190               |
| Griffiths v. Mortimer. Re Mortimer ..                                     | 54 L. J. Ch. 414, 52 L. T. 383, 33 W. R. 441, W. N. 1885, 30 ..                 | 520               |
| Grimwade v. Mutual Society ..                                             | 52 L. T. 409 ..                                                                 | 87                |
| Groves, Maclean and Co. v. Volkart ..                                     | 1 C. & E. 309 ..                                                                | 424               |
| Guest v. Neames ..                                                        | W. N. 1884, 227 ..                                                              | 185               |
| Guillemin, Ex parte. Re Oriental Bank Corporation ..                      | 28 Ch. D. 634, 54 L. J. Ch. 322, 52 L. T. 167 ..                                | 103               |
| Gurney v. Canterbury (Viscountess). Platt v. Mendel ..                    | 27 Ch. D. 246, 54 L. J. Ch. 1145, 51 L. T. 424, 32 W. R. 918 ..                 | 258               |
| Gyhon, Re. Allen v. Taylor ..                                             | 29 Ch. D. 834, 54 L. J. Ch. 945, 53 L. T. 539, 33 W. R. 620 ..                  | 304               |
| Gyte v. Gyte and Mollineaux ..                                            | 10 P. D. 185, 34 W. R. 47 ..                                                    | 332               |
| <b>H.</b>                                                                 |                                                                                 |                   |
| Haddan's Patent, Re ..                                                    | 54 L. J. Ch. 126, 51 L. T. 190, 33 W. R. 96, W. N. 1884, 192 ..                 | 287               |
| Haines v. Guthrie ..                                                      | 13 Q. B. D. 818, 53 L. J. Q. B. 521, 51 L. T. 645, 33 W. R. 99, 48 J. P. 756 .. | 147               |
| Hall and Co., Re ..                                                       | 34 W. R. 56, W. N. 1885, 190 ..                                                 | 100               |
| Hall, Re. Ex parte Close ..                                               | 14 Q. B. D. 386, 54 L. J. Q. B. 43, 51 L. T. 795, 33 W. R. 228 ..               | 57                |
| ———— Hall v. Hall ..                                                      | 54 L. J. Ch. 527, 51 L. T. 901, 33 W. R. 508, W. N. 1885, 17 ..                 | 474               |
| ———— v. London, Brighton, and South Coast Railway Co. ..                  | 15 Q. B. D. 505, 53 L. T. 345 ..                                                | 381               |
| ———— v. Truman, Hanbury, and Co. ..                                       | 29 Ch. D. 307, 54 L. J. Ch. 717, 52 L. T. 82, 586 ..                            | 325               |
| Hallas v. Robinson ..                                                     | 15 Q. B. D. 288, 54 L. J. Q. B. 364, 33 W. R. 426 ..                            | 55                |
| Hall-Dare v. Hall-Dare ..                                                 | 29 Ch. D. 133, 52 L. T. 381, 33 W. R. 515, 34 W. R. 82, W. N. 1885, 199 ..      | 460               |
| Halliwell, In the goods of ..                                             | 10 P. D. 198, 54 L. J. P. 32, 33 W. R. 371, 49 J. P. 233 ..                     | 5                 |
| Hamilton (Duke of) v. Dunlop ..                                           | 10 App. Cas. 813 ..                                                             | 396               |

| Name of Case.                                                    | Reference to Reports.                                                                    | Column of Digest. |
|------------------------------------------------------------------|------------------------------------------------------------------------------------------|-------------------|
| Hampden v. Wallis (No. 1) .. .. .                                | 26 Ch. D. 746, 54 L. J. Ch. 83, 50 }<br>L. T. 15, 32 W. R. 808 .. }                      | 315               |
| ————— (No. 2) .. .. .                                            | 27 Ch. D. 251, 54 L. J. Ch. 1175, }<br>51 L. T. 357, 32 W. R. 977 .. }                   | 347               |
| Hampstead (St. John's) Vestry v. Hoopel ..                       | 15 Q. B. D. 652, 54 L. J. M. C. }<br>147, 33 W. R. 903, 49 J. P. 741 }                   | 249               |
| Hardman v. Child .. .. .                                         | 28 Ch. D. 712, 54 L. J. Ch. 695, }<br>52 L. T. 465, 33 W. R. 544 .. }                    | 491               |
| Hardwicke v. Wilmot. Re De Ros .. ..                             | 31 Ch. D. 81, 55 L. J. Ch. 73, 53 }<br>L. T. 524, 34 W. R. 36, W. N. }<br>1885, 184 .. } | 409               |
| Hardwidge, Re .. .. .                                            | 52 L. T. 40, W. N. 1884, 204 ..                                                          | 316               |
| Hargreaves, Re. Musson v. Hargreaves ..                          | W. N. 1885, 174 .. .. .                                                                  | 512               |
| Harris' Settled Estates, Re .. .. .                              | 28 Ch. D. 171, 54 L. J. Ch. 208, }<br>51 L. T. 855, 33 W. R. 393 .. }                    | 402               |
| Harris v. Davies .. .. .                                         | 10 App. Cas. 279, 54 L. J. P. C. 15, }<br>53 L. T. 601 .. .. .                           | 79                |
| Harris v. Hawker. Ex parte Jenkins. Re }<br>Granville .. .. .    | 33 W. R. 523 .. .. .                                                                     | 21, 27            |
| Harris and Dixon v. Jacobs (Marcus) and Co.                      | 15 Q. B. D. 247, 54 L. J. Q. B. 492                                                      | 425               |
| Harrison, Ex parte. Re Cannock, etc. Col- }<br>liery Co. .. .. . | 28 Ch. D. 363, 54 L. J. Ch. 554, }<br>53 L. T. 189, 32 W. R. 1011 .. }                   | 96                |
| ————— Re Peake .. .. .                                           | 13 Q. B. D. 753, 53 L. J. Ch. 977, }<br>51 L. T. 878 .. .. .                             | 31                |
| —————, Re. Harrison v. Harrison .. ..                            | 28 Ch. D. 220, 54 L. J. Ch. 26, }<br>617, 52 L. T. 204, 33 W. R. 240 }                   | 417               |
| —————, Turner v. Hellard .. .. .                                 | 30 Ch. D. 390 .. .. .                                                                    | 507               |
| ————— v. National Provincial Bank of Eng- }<br>land .. .. .      | 49 J. P. 390 .. .. .                                                                     | 235               |
| Harston v. Harvey .. .. .                                        | 1 C. & E. 404 .. .. .                                                                    | 109               |
| Hartley v. Wilkinson .. .. .                                     | 49 J. P. 726 .. .. .                                                                     | 471               |
| Hart, Re. Hart v. Hernandez .. .. .                              | 52 L. T. 217, W. N. 1885, 18 ..                                                          | 515               |
| Harvey, Ex parte. Re Player (No. 1) ..                           | 54 L. J. Q. B. 553 .. .. .                                                               | 496               |
| ————— (No. 2) .. .. .                                            | 54 L. J. Q. B. 554 .. .. .                                                               | 496               |
| Harvey, Re. Ex parte Board of Trade ..                           | W. N. 1884, 245 .. .. .                                                                  | 43                |
| Harvey v. Lovekin (f. c. Harvey) .. ..                           | 10 P. D. 122, 54 L. J. P. 1, 33 }<br>W. R. 188 .. .. .                                   | 332               |
| Hasker, Ex parte .. .. .                                         | 14 Q. B. D. 82, 54 L. J. M. C. 94 ..                                                     | 319               |
| Hasker v. Wood .. .. .                                           | 54 L. J. Q. B. 419, 33 W. R. 697, }<br>W. N. 1885, 116 .. .. .                           | 319               |
| Hastings, Re. Ex parte Dearle .. .. .                            | 14 Q. B. D. 184, 54 L. J. Q. B. 74, }<br>33 W. R. 440 .. .. .                            | 36                |
| Hatherley v. Dunning. Re Dunning .. ..                           | 54 L. J. Ch. 900, 53 L. T. 413, 33 }<br>W. R. 760 .. .. .                                | 159               |
| Hawes v. Curtis. Re Curtis .. .. .                               | 52 L. T. 244, W. N. 1885, 29, 55 ..                                                      | 186               |
| ———— & Son v. South-Eastern Railway Co. ..                       | 54 L. J. Q. B. 174, 52 L. T. 514 ..                                                      | 68                |
| Hawke (Lady) v. Brear .. .. .                                    | 14 Q. B. D. 841, 54 L. J. Q. B. 315, }<br>52 L. T. 432, 33 W. R. 613 .. }                | 320               |
| Hawkes, Ex parte. Re Toward. Ex parte }<br>Moss .. .. .          | 14 Q. B. D. 310, 54 L. J. Q. B. 126, }<br>52 L. T. 188 .. .. .                           | 45                |
| Hawkins v. Hawkins & Hope .. .. .                                | 10 P. D. 177, 54 L. J. P. 94, 34 }<br>W. R. 47 .. .. .                                   | 177               |
| Haworth, Re .. .. .                                              | W. N. 1885, 48 .. .. .                                                                   | 221               |
| Hayward v. East London Waterworks Co. ..                         | 28 Ch. D. 138, 54 L. J. Ch. 523, 52 }<br>L. T. 175, 49 J. P. 452 .. }                    | 501               |
| ———— v. Moss .. .. .                                             | 49 J. P. 248 .. .. .                                                                     | 14                |
| Hayward's Trade-Mark, Re .. .. .                                 | 54 L. J. Ch. 1003, 53 L. T. 487, }<br>W. N. 1885, 158 .. .. .                            | 466               |
| Haywood v. Silber .. .. .                                        | 30 Ch. D. 404, 34 W. R. 114 ..                                                           | 207               |

| Name of Case.                                                        | Reference to Reports.                                                                                     | Column of Digest. |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|-------------------|
| Hazle's Settled Estates, Re .. .. .                                  | 29 Ch. D. 78, 54 L. J. Ch. 628, 52 L. T. 947, 33 W. R. 759 ..                                             | 407               |
| "Heinrich Bjorn," The.. .. .                                         | 10 P. D. 44, 54 L. J. P. 33, 52 L. T. 560, 33 W. R. 719, 5 Asp. M. C. 145, 391 ..                         | 434               |
| Hellier v. Hellier .. .. .                                           | 9 P. D. 237, 53 L. J. P. 105, 33 W. R. 324, 49 J. P. 8 ..                                                 | 527               |
| Hepburn, Re. Ex parte Smith .. ..                                    | 14 Q. B. D. 394, 54 L. J. Q. B. 422, 51 L. T. 589, 33 W. R. 30, 49 J. P. 100, W. N. 1884, 199 ..          | 39, 227           |
| Heppenstall v. Hose .. .. .                                          | 15 Q. B. D. 561, 54 L. J. Q. B. 340, 53 L. T. 94, 33 W. R. 606, 49 J. P. 502, 1 C. & E. 364 ..            | 489               |
| Herman (or Hermann) v. Jeuchner (or Zeuchner) .. .. .                | 1 C. & E. 413 ..                                                                                          | 111               |
| —— v. Royal Exchange Shipping Co. ..                                 | 27 Ch. D. 284, 53 L. J. Ch. 865, 51 L. T. 117, 33 W. R. 252 ..                                            | 422               |
| Hernando, Re. Hernando v. Sawtell ..                                 | 54 L. J. Ch. 572, 52 L. T. 380, W. N. 1885, 53 ..                                                         | 298               |
| Hewett v. Murray .. .. .                                             | 15 Q. B. D. 159, 54 L. J. Q. B. 402, 53 L. T. 156 ..                                                      | 353               |
| Hewitt, Ex parte. Re Hewitt .. ..                                    | 14 Q. B. D. 49, 54 L. J. Q. B. 198, 52 L. T. 201 ..                                                       | 21                |
| Heyworth, Ex parte. Re Rhodes .. ..                                  | 1 C. & E. 312 ..                                                                                          | 35                |
| —— v. London (Mayor) and Rhodes ..                                   | 54 L. J. Ch. 608, 52 L. T. 89, 33 W. R. 320, W. N. 1885, 15 ..                                            | 368               |
| Hickley & Steward, Re .. .. .                                        | 29 Ch. D. 697, 54 L. J. Ch. 769, 52 L. T. 889, 33 W. R. 573, 34 W. R. 81, W. N. 1885, 200 ..              | 443               |
| Higgins, Re. Day v. Turnell .. .. .                                  | 29 Ch. D. 236, 54 L. J. Ch. 749, 52 L. T. 512, 33 W. R. 874 ..                                            | 390               |
| Higgs v. Weaver. Re Weaver .. ..                                     | W. N. 1885, 32 ..                                                                                         | 22                |
| Hill v. Edward .. .. .                                               | 28 Ch. D. 291, 29 Ch. D. 331, 54 L. J. Ch. 212, 510, 51 L. T. 891, 52 L. T. 707, 33 W. R. 334, 511 ..     | 120               |
| —— v. Grant. Re Dickson .. .. .                                      | 29 Ch. D. 348, 54 L. J. Ch. 816, 52 L. T. 398, 33 W. R. 449 ..                                            | 190               |
| —— v. Spurgeon. Re Love .. .. .                                      | 54 L. J. Ch. 595, 52 L. T. 290, 33 W. R. 570, W. N. 1884, 15 ..                                           | 474               |
| Hill & Chapman, Re .. .. .                                           | 15 Q. B. D. 122, 54 L. J. M. C. 113, 53 L. T. 196, 49 J. P. 230 ..                                        | 519               |
| Hillman v. Whitfield. Reg. v. Whitfield ..                           | 28 Ch. D. 356, 54 L. J. Ch. 399, 52 L. T. 242 ..                                                          | 233               |
| Hipgrave v. Case .. .. .                                             | 14 Q. B. D. 918, 54 L. J. Q. B. 310, 33 W. R. 582, 49 J. P. 359 ..                                        | 453               |
| Hirst (or Hurst) v. Taylor .. .. .                                   | W. N. 1884, 241 ..                                                                                        | 272               |
| Hoar v. Lee .. .. .                                                  | 53 L. T. 627, 34 W. R. 70, W. N. 1885, 184 ..                                                             | 339               |
| Hobson, Re. Walker v. Appach or Appack ..                            | 14 Q. B. D. 228, 33 W. R. 662 ..                                                                          | 12                |
| Hodkinson v. London & North-Western Railway Co. .. .. .              | W. N. 1884, 236 ..                                                                                        | 378               |
| Hoey v. Green .. .. .                                                | 14 Q. B. D. 475, 15 Q. B. D. 256 ..                                                                       | 477               |
| Hogg v. Brooks .. .. .                                               | 14 Q. B. D. 289, 15 Q. B. D. 76, 54 L. J. M. C. 53, 137, 52 L. T. 102, 33 W. R. 344, 698, 49 J. P. 166 .. | 211               |
| Holborn (Middlesex) Guardians v. Chertsey (Surrey) Guardians .. .. . | 53 L. T. 212 ..                                                                                           | 293, 310          |
| Holburne, Re. Coates v. Mackillop .. ..                              | 28 Ch. D. 111, 54 L. J. Ch. 436, 51 L. T. 673, 49 J. P. 228 ..                                            | 71                |
| Holgate v. Shutt (No. 2) .. .. .                                     | 15 Q. B. D. 48, 54 L. J. Q. B. 320, 53 L. T. 68, 33 W. R. 459, 572 ..                                     | 60                |
| Holland, Re. Ex parte Nichols. Ex parte Warren .. .. .               |                                                                                                           | 421               |

| Name of Case.                                                                                                     | Reference to Reports.                                                                              | Column of Digest. |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-------------------|
| Holland v. Worley .. .. .                                                                                         | 26 Ch. D. 578, 54 L. J. Ch. 268, 50 L. T. 526, 32 W. R. 749, 49 J. P. 7 ..                         | 226               |
| Hollins v. Verney .. .. .                                                                                         | 13 Q. B. D. 304, 53 L. J. Q. B. 430, 51 L. T. 753, 33 W. R. 5, 48 J. P. 580 ..                     | 363               |
| Holmes (A. D.), Re .. .. .                                                                                        | 29 Ch. D. 786, 55 L. J. Ch. 33 ..                                                                  | 262               |
| — v. Carter. Carter v. Molson .. .. .                                                                             | 10 App. Cas. 664 .. .. .                                                                           | 76                |
| Holmes v. Shaw .. .. .                                                                                            | 52 L. T. 797 .. .. .                                                                               | 343               |
| Home, Re. Ex parte Edwards .. .. .                                                                                | 54 L. J. Q. B. 447, W. N. 1885, 133 ..                                                             | 32                |
| Hopkinson v. Caunt .. .. .                                                                                        | 14 Q. B. D. 592, 54 L. J. Q. B. 284, 33 W. R. 522, 49 J. P. 550 ..                                 | 252               |
| Horne & Hellard, Re .. .. .                                                                                       | 29 Ch. D. 736, 54 L. J. Ch. 919, 53 L. T. 562 .. .. .                                              | 84                |
| Horner v. Freeman .. .. .                                                                                         | W. N. 1884, 223 .. .. .                                                                            | 237               |
| — v. Whitechapel Board of Works .. .. .                                                                           | 54 L. J. Ch. 148, 51 L. T. 414 ..                                                                  | 247               |
| Horniblow, Re. Ex parte Official Receiver .. .. .                                                                 | 53 L. T. 155 .. .. .                                                                               | 42                |
| Hough v. Head .. .. .                                                                                             | 54 L. J. Q. B. 294, 55 L. J. Q. B. 43, 52 L. T. 861, 33 W. R. 458, 34 W. R. 160 .. .. .            | 197               |
| Houghton and Hallmark's Trade-Mark, Re. Re Mitchell's Trade-Mark .. .. .                                          | 28 Ch. D. 666, 54 L. J. Ch. 216, 809, 51 L. T. 900, 52 L. J. 575, 33 W. R. 148, 408 .. .. .        | 470               |
| — v. Sevenoaks Estate Co. .. .. .                                                                                 | 33 W. R. 341, W. N. 1884, 243 ..                                                                   | 256               |
| — Estate, Re .. .. .                                                                                              | 30 Ch. D. 102, 55 L. J. Ch. 37, 53 L. T. 196, 33 W. R. 869 ..                                      | 404               |
| House, Ex parte. Re May .. .. .                                                                                   | 25 Ch. D. 231, 28 Ch. D. 516, 54 L. J. Ch. 338, 52 L. T. 78, 33 W. R. 917 .. .. .                  | 270               |
| Household, Re. Household v. Household .. .. .                                                                     | 27 Ch. D. 553, 54 L. J. Ch. 157, 51 L. T. 319 .. .. .                                              | 416               |
| Household & Rosher v. Fairburn & Hall .. .. .                                                                     | 51 L. T. 498 .. .. .                                                                               | 286               |
| House Improvement Supply Association, Re. Davis v. House Improvement Supply Association. Giles v. Nuthall .. .. . | W. N. 1885, 51 .. .. .                                                                             | 83                |
| House Property, etc., Co. v. H.P. Horse-Nail Co. .. .. .                                                          | 29 Ch. D. 190, 54 L. J. Ch. 715, 52 L. T. 507, 33 W. R. 562 ..                                     | 345               |
| Houston v. Sligo (Marquis), No. 1 .. .. .                                                                         | 29 Ch. D. 448, 52 L. T. 96 ..                                                                      | 145, 149          |
| Houston v. Sligo (Marquis), No. 2 .. .. .                                                                         | 52 L. T. 870 .. .. .                                                                               | 213               |
| Howard v. Graves .. .. .                                                                                          | 52 L. T. 858, W. N. 1885, 113 ..                                                                   | 75                |
| Howarth v. Howarth .. .. .                                                                                        | 9 P. D. 218, 51 L. T. 872 ..                                                                       | 333               |
| Hubback, Re. International Marine Hydro-pathic Co. v. Hawes .. .. .                                               | 29 Ch. D. 934, 54 L. J. Ch. 923, 52 L. T. 208, 33 W. R. 666 ..                                     | 158               |
| Hudson, Re. Creed v. Henderson .. .. .                                                                            | 54 L. J. Ch. 811, 33 W. R. 819, W. N. 1885, p. 100 .. .. .                                         | 108               |
| Huggall (or Huggall) v. M <sup>c</sup> Kean (or M <sup>c</sup> Lean) .. .. .                                      | 53 L. T. 94, 33 W. R. 588, 1 C. & E. 391, W. N. 1885, p. 96 ..                                     | 215               |
| Hughes v. Searle .. .. .                                                                                          | W. N. 1885, p. 79 .. .. .                                                                          | 411               |
| Hughes' Trusts, Re .. .. .                                                                                        | W. N. 1885, p. 62 .. .. .                                                                          | 180               |
| Hull (Mayor) v. Morton .. .. .                                                                                    | W. N. 1885, p. 130 .. .. .                                                                         | 454               |
| Humphreys v. Jones .. .. .                                                                                        | 31 Ch. D. 30, 55 L. J. Ch. 1, 53 L. T. 482, 34 W. R. 1, W. N. 1885, 179 ..                         | 442               |
| Hunt v. Hunt (No. 1) .. .. .                                                                                      | 28 Ch. D. 606, 52 L. T. 302, 33 W. R. 157 .. .. .                                                  | 185               |
| — v. — (No. 2) .. .. .                                                                                            | 54 L. J. Ch. 289, W. N. 1884, p. 243 ..                                                            | 338               |
| Hunter v. Edney (otherwise Hunter) .. .. .                                                                        | 10 P. D. 80 .. .. .                                                                                | 177               |
| — v. Johnson .. .. .                                                                                              | 13 Q. B. D. 225, 53 L. J. M. C. 182, 51 L. T. 791, 32 W. R. 857, 48 J. P. 663, 15 Cox C. C. 600 .. | 142               |

| Name of Case.                                              | Reference to Reports.                                                                 | Column of Digest. |
|------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------|
| Hunter v. Myatt .. .. .                                    | 28 Ch. D. 181, 54 L. J. Ch. 615, 52 L. T. 509, 33 W. R. 411 ..                        | 256               |
| Hurst v. Hurst .. .. .                                     | 28 Ch. D. 159, 54 L. J. Ch. 190, 33 W. R. 473 ..                                      | 152               |
| — (or Hirst) v. Taylor .. .. .                             | 14 Q. B. D. 918, 54 L. J. Q. B. 310, 33 W. R. 582, 49 J. P. 359 ..                    | 272               |
| Husband v. Martin .. .. .                                  | 54 L. J. Ch. 1080, 52 L. T. 406, 33 W. R. 516, W. N. 1885, 59 ..                      | 73                |
| Hutcheson v. Eaton .. .. .                                 | 13 Q. B. D. 861, 51 L. T. 846 ..                                                      | 365               |
| Hutchins (or Hutchings) v. Humphreys (or Humphrey) .. .. . | 54 L. J. Ch. 650, 52 L. T. 690, 33 W. R. 563, W. N. 1885, p. 79 ..                    | 206               |
| Hutton, Re. Ex parte Benwell .. .. .                       | 14 Q. B. D. 301, 54 L. J. Q. B. 53, 51 L. T. 677, 33 W. R. 242 ..                     | 24                |
| Hyde v. Entwistle .. .. .                                  | 52 L. T. 760, 49 J. P. 517 ..                                                         | 173               |
| Hyde & Co.'s Trade Mark, Re .. .. .                        | 54 L. J. 395, n. .. .. .                                                              | 465               |
| I.                                                         |                                                                                       |                   |
| Incorporated Law Society, Ex parte. Re Chaffers .. .. .    | 15 Q. B. D. 467 .. .. .                                                               | 447               |
| Incorporated Law Society v. Bedford .. .. .                | 49 J. P. 215 .. .. .                                                                  | 452               |
| Inderwick, Re .. .. .                                      | 25 Ch. D. 279, 54 L. J. Ch. 72, 50 L. T. 221, 32 W. R. 541 ..                         | 447               |
| — v. Leech .. .. .                                         | 1 C. & E. 412 .. .. .                                                                 | 210               |
| Ingham, Re. Ex parte Craven. Ex parte King .. .. .         | 52 L. T. 299, 714, W. N. 1884, 244, W. N. 1885, 21 ..                                 | 38                |
| Inglis v. Stock .. .. .                                    | 10 App. Cas. 263, 54 L. J. Q. B. 582, 52 L. T. 821, 33 W. R. 877, 5 Asp. M. C. 294 .. | 195               |
| Interleaf Publishing Co. v. Phillips .. .. .               | 1 C. & E. 315 .. .. .                                                                 | 389               |
| International Marine Hydropathic Co., Re .. .. .           | 28 Ch. D. 470, 33 W. R. 587 ..                                                        | 87                |
| — v. Hawes .. .. .                                         | 29 Ch. D. 934, 54 L. J. Ch. 923, 52 L. T. 908, 33 W. R. 666 ..                        | 158               |
| Irish Land Commission v. Grant .. .. .                     | 10 App. Cas. 14, 52 L. T. 228, 33 W. R. 357, 13 L. R. Ir. 478 ..                      | 231               |
| Isaacs, Re. Ex parte Miles .. .. .                         | 15 Q. B. D. 39, 54 L. J. Q. B. 566 ..                                                 | 392               |
| — Jacob v. Isaac .. .. .                                   | 30 Ch. D. 418, 54 L. J. Ch. 1136, 53 L. T. 478, 33 W. R. 845 ..                       | 321               |
| J.                                                         |                                                                                       |                   |
| Jackson v. Krüger .. .. .                                  | 54 L. J. Q. B. 446, 52 L. T. 962 ..                                                   | 345               |
| Jacob v. Isaac. Re Isaacs .. .. .                          | 30 Ch. D. 418, 54 L. J. Ch. 1136, 53 L. T. 478, 33 W. R. 845 ..                       | 321               |
| James, Re .. .. .                                          | 33 W. R. 654 .. .. .                                                                  | 437               |
| — (Thomas), Re .. .. .                                     | 51 L. T. 596, 32 W. R. 898, W. N. 1884, p. 172 ..                                     | 404               |
| — v. Couchman .. .. .                                      | 29 Ch. D. 212, 54 L. J. Ch. 838, 52 L. T. 344, 33 W. R. 452 ..                        | 496               |
| Jenkins, Ex parte. Re Glanville. Harris v. Hawker .. .. .  | 33 W. R. 523 .. .. .                                                                  | 21, 27            |
| — v. Rees .. .. .                                          | 33 W. R. 929, W. N. 1885, 170 ..                                                      | 352               |
| Jenkinson, Re. Ex parte Nottingham, &c., Bank .. .. .      | 15 Q. B. D. 441, 54 L. J. Q. B. 601 ..                                                | 34                |
| Jennings v. Foster .. .. .                                 | W. N. 1884, p. 200 .. .. .                                                            | 282               |



| Name of Case.                                                | Reference to Reports.                                                                             | Column of Digest. |
|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-------------------|
| "John McIntyre," The .. .. .                                 | 9 P. D. 135, 53 L. J. P. 115, 51 L. T. 185, 33 W. R. 190 ..                                       | 430               |
| Johnson, Re. Sly v. Blake .. .. .                            | 29 Ch. D. 964, 52 L. T. 682, 33 W. R. 502 .. .. .                                                 | 228               |
| ——, Re. Wagg v. Shand .. .. .                                | 53 L. T. 136 .. .. .                                                                              | 153               |
| —— and Tustin, Re .. .. .                                    | 28 Ch. D. 84, 30 Ch. D. 42, 54 L. J. Ch. 43, 889, 51 L. T. 656, 53 L. T. 281, 33 W. R. 43, 737 .. | 492               |
| Johnston (or Johnson), Re. Cockerell v. Essex (Earl) .. .. . | 26 Ch. D. 538, 53 L. J. Ch. 645, 52 L. T. 44, 32 W. R. 634 ..                                     | 510               |
| —— v. Johnston .. .. .                                       | 53 L. J. Ch. 1014, 52 L. T. 76, 33 W. R. 239 .. .. .                                              | 418               |
| Johnstone v. Earl Spencer .. .. .                            | 30 Ch. D. 581, 53 L. T. 502, 34 W. R. 10 .. .. .                                                  | 113               |
| Jones, Re. Starks v. Salter .. .. .                          | W. N. 1885, 152 .. .. .                                                                           | 512               |
| —— (or Pughe Jones) v. Blake. Re Blake ..                    | 29 Ch. D. 913, 54 L. J. Ch. 880, 53 L. T. 302, 33 W. R. 886 ..                                    | 315, 478          |
| —— (Evan), Trustees of v. Gittins ..                         | 51 L. T. 599 .. .. .                                                                              | 117               |
| —— v. Liverpool (Mayor) .. .. .                              | 14 Q. B. D. 890, 54 L. J. Q. B. 345, 33 W. R. 551, 49 J. P. 311 ..                                | 243               |
| —— v. Richards .. .. .                                       | 15 Q. B. D. 439 .. .. .                                                                           | 329               |
| Jones's Trade Mark, Re .. .. .                               | 53 L. T. 1 .. .. .                                                                                | 466               |
| Joseph v. Lyons .. .. .                                      | 15 Q. B. D. 280, 54 L. J. Q. B. 1, 51 L. T. 740, 33 W. R. 145, 1 C. & E. 262 .. .. .              | 55                |
| Josolyne v. Meeson .. .. .                                   | 53 L. T. 319, 49 J. P. 805 .. ..                                                                  | 251               |
| Judd's Trusts, Re .. .. .                                    | W. N. 1884, 206 .. .. .                                                                           | 512               |
| Jupp v. Powell .. .. .                                       | 1 C. & E. 349 .. .. .                                                                             | 228               |
| K.                                                           |                                                                                                   |                   |
| Kaltenbach v. Lewis .. .. .                                  | 10 App. Cas. 617, 52 L. J. Ch. 881, 55 L. J. Ch. 58, 48 L. T. 844, 31 W. R. 731 .. .. .           | 161               |
| Kannreuther v. Geiselbrecht. Re Kloebe ..                    | 28 Ch. D. 175, 54 L. J. Ch. 297, 52 L. T. 19, 33 W. R. 391 ..                                     | 156               |
| Keay v. Boulton .. .. .                                      | 25 Ch. D. 212, 54 L. J. Ch. 48, 49 L. T. 631, 32 W. R. 591 ..                                     | 512               |
| Keep's Trade Mark, Re .. .. .                                | 26 Ch. D. 187, 54 L. J. Ch. 637, 50 L. T. 453, 32 W. R. 427 ..                                    | 469               |
| Kempe v. Jones .. .. .                                       | W. N. 1884, 214 .. .. .                                                                           | 84                |
| Kennedy v. Lyell .. .. .                                     | 15 Q. B. D. 491, 53 L. T. 466 .. ..                                                               | 494               |
| Kensington (Lord), Re. Bacon v. Ford ..                      | 29 Ch. D. 527, 54 L. J. Ch. 1085, 53 L. T. 19, 33 W. R. 689 ..                                    | 200               |
| Kensit v. G. E. Ry. Co. .. .. .                              | 27 Ch. D. 122, 54 L. J. Ch. 19, 51 L. T. 862, 32 W. R. 885, 47 J. P. 534                          | 499               |
| Kilford v. Blaney (or Blayney) .. .. .                       | 29 Ch. D. 145, 31 Ch. D. 56, 53 L. T. 17, 33 W. R. 630, 34 W. R. 109                              | 157               |
| Kimber v. Paravicini .. .. .                                 | 15 Q. B. D. 222, 54 L. J. Q. B. 471, 53 L. T. 299, 33 W. R. 907 ..                                | 138               |
| King, Ex parte. Ex parte Craven. Re Ingham                   | 52 L. T. 299, 714, W. N. 1884, 44, W. N. 1885, 21 .. .. .                                         | 38                |
| King, Re .. .. .                                             | W. N. 1885, 175 .. .. .                                                                           | 198               |
| Kirk, Re. Nicholson v. Kirk .. .. .                          | 52 L. T. 346, W. N. 1885, 7 .. ..                                                                 | 508               |
| Kloebe, Re. Kannreuther v. Geiselbrecht ..                   | 28 Ch. D. 175, 54 L. J. Ch. 297, 52 L. T. 19, 33 W. R. 391 ..                                     | 156               |

| Name of Case.                                                                                | Reference to Reports.                                                                                  | Column of Digest. |
|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|-------------------|
| Knatchbull Estate, Re the. Knatchbull's Settled Estate, Re .. .. .                           | 29 Ch. D. 588, 54 L. J. Ch. 154, 1168, 51 L. T. 695, 53 L. T. 284, 33 W. R. 10, 269 .. .. .            | 404               |
| Knight v. Bowers .. .. .                                                                     | 14 Q. B. D. 845, 54 L. J. M. C. 108, 53 L. T. 234, 33 W. R. 613, 49 J. P. 614 .. .. .                  | 7                 |
| —— v. Clarke .. .. .                                                                         | 15 Q. B. D. 294, 54 L. J. Q. B. 509 .. .. .                                                            | 209               |
| —— v. Whitmore .. .. .                                                                       | 53 L. T. 233, 33 W. R. 907 .. .. .                                                                     | 471               |
| Knill v. Prowse .. .. .                                                                      | 33 W. R. 163 .. .. .                                                                                   | 17                |
| Knowles' Settled Estate, Re .. .. .                                                          | 27 Ch. D. 707, 54 L. J. Ch. 264, 51 L. T. 655, 33 W. R. 364 .. .. .                                    | 402               |
| Koster, Ex parte. Re Park .. .. .                                                            | 14 Q. B. D. 597, 54 L. J. Q. B. 389, 52 L. T. 946, 33 W. R. 606 .. .. .                                | 15                |
| L.                                                                                           |                                                                                                        |                   |
| Lacy v. Stone. Re Pitt .. .. .                                                               | 53 L. T. 113, 33 W. R. 653, W. N. 1885, 61 .. .. .                                                     | 74                |
| Ladywell Mining Co. v. Huggons .. .. .                                                       | W. N. 1885, 55 .. .. .                                                                                 | 355               |
| Lake and Taylor's Mortgage, Re. Milford Haven Railway Co. v. Mowatt. Spain v. Mowatt .. .. . | 28 Ch. D. 402, 54 L. J. Ch. 567, 33 W. R. 597 .. .. .                                                  | 487               |
| Lamb's Trusts, Re .. .. .                                                                    | 28 Ch. D. 77, 54 L. J. Ch. 107, 33 W. R. 163 .. .. .                                                   | 479               |
| Lancashire & Cheshire Telephonic Exchange v. Manchester Overseers .. .. .                    | 14 Q. B. D. 267, 54 L. J. M. C. 63, 52 L. T. 793, 33 W. R. 203, 49 J. P. 53, 724 .. .. .               | 294               |
| Land & Loan Mortgage, etc., Co. of S. Africa, Re. Ex parte Boyle .. .. .                     | 54 L. J. Ch. 550, 52 L. T. 501, 33 W. R. 450, W. N. 1885, 59 .. .. .                                   | 82                |
| Landon v. Hammer .. .. .                                                                     | W. N. 1885, p. 62 .. .. .                                                                              | 258               |
| Lane v. Collins .. .. .                                                                      | 14 Q. B. D. 793, 54 L. J. M. C. 76, 52 L. T. 257, 33 W. R. 365, 49 J. P. 89, 15 Cox. C. C. 677 .. .. . | 7                 |
| —— v. Rhoades. Re Rhoades .. .. .                                                            | 29 Ch. D. 142, 54 L. J. Ch. 573, 53 .. .. .                                                            | 525               |
| Laphorn v. Harvey .. .. .                                                                    | 49 J. P. 709 .. .. .                                                                                   | 176               |
| Last v. London Assurance Corporation .. .. .                                                 | 14 Q. B. D. 239, 10 App. Cas. 438, 54 L. J. Q. B. 4, 52 L. T. 604, 33 W. R. 207, 49 J. P. 564 .. .. .  | 387               |
| Lauderdale Peerage, The .. .. .                                                              | 10 App. Cas. 692 .. .. .                                                                               | 290               |
| Lawson v. Vacuum Brake Co. .. .. .                                                           | 27 Ch. D. 137, 54 L. J. Ch. 16, 51 L. T. 275, 33 W. R. 186 .. .. .                                     | 336               |
| Lea v. Parker .. .. .                                                                        | 13 Q. B. D. 835, 54 L. J. Q. B. 38, 33 W. R. 101 .. .. .                                               | 118               |
| Leaver, Ex parte. Re Metropolitan Electric Light Co. .. .. .                                 | 51 L. T. 817 .. .. .                                                                                   | 101               |
| Le Blond v. Curtis .. .. .                                                                   | 52 L. T. 574, 33 W. R. 561, W. N. 1885, 99 .. .. .                                                     | 359               |
| Lee v. Dunsford .. .. .                                                                      | 54 L. J. Ch. 108, 51 L. T. 590 .. .. .                                                                 | 256               |
| —— & Chapman, Ex parte. Re Asphaltic Paving Co. .. .. .                                      | 30 Ch. D. 216, 54 L. J. Ch. 460, 53 L. T. 65, 33 W. R. 513 .. .. .                                     | 105               |
| Leicester Club & County Racecourse Co., Re. Cannon's Case .. .. .                            | 30 Ch. D. 629, 53 L. T. 340, 34 W. R. 14 .. .. .                                                       | 85                |
| Leicestershire Banking Co., Ex parte. Re Dale .. .. .                                        | 14 Q. B. D. 48, 33 W. R. 354 .. .. .                                                                   | 26                |
| Leigh v. Burnett (or Burnell) .. .. .                                                        | 29 Ch. D. 231, 54 L. J. Ch. 757, 52 L. T. 458, 33 W. R. 578 .. .. .                                    | 213               |

| Name of Case.                                                                                                                                | Reference to Reports.                                                                                                      | Column of Digest. |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------|
| <i>v. Dickeson</i> .. .. .                                                                                                                   | 15 Q. B. D. 60, 54 L. J. Q. B. 18, 52 L. T. 790, 33 W. R. 538, 48 J. P. 246 .. .. .                                        | 459               |
| <i>ay v. Welch. Re Le May's Registered</i>                                                                                                   | 28 Ch. D. 24, 54 L. J. Ch. 279, 51 L. T. 867, 33 W. R. 33 .. .. .                                                          | 115               |
| <i>gn</i> .. .. .                                                                                                                            | 55 L. J. Q. B. 45, 34 W. R. 51, W. N. 1885, 189 .. .. .                                                                    | 41                |
| <i>s, Ex parte. Re Lennox</i> .. .. .                                                                                                        | 52 L. T. 768 .. .. .                                                                                                       | 432               |
| <i>ir," The</i> .. .. .                                                                                                                      | 52 L. T. 551, W. N. 1885, 76 .. .. .                                                                                       | 53                |
| <i>r. Polack</i> .. .. .                                                                                                                     | 31 Ch. D. 90, 55 L. J. Ch. 87, 34 W. R. 59 .. .. .                                                                         | 265               |
| <i>r. Sewill. Re Moss</i> .. .. .                                                                                                            | 52 L. T. 263 .. .. .                                                                                                       | 195               |
| <i>Co. v. Merchants' Marine Insurance</i>                                                                                                    | 30 Ch. D. 119, 54 L. J. Ch. 968, 53 L. T. 200, 33 W. R. 895 .. .. .                                                        | 416               |
| <i>Trusts, Re</i> .. .. .                                                                                                                    | 33 W. R. 128, W. N. 1884, 224 .. .. .                                                                                      | 347               |
| <i>Re</i> .. .. .                                                                                                                            | 30 Ch. D. 654, 53 L. T. 387, 34 W. R. 156 .. .. .                                                                          | 139               |
| <i>Re. Foxwell v. Lewis</i> .. .. .                                                                                                          | 34 W. R. 40, W. N. 1885, 185 .. .. .                                                                                       | 317               |
| <i>Re. Lewis v. Lewis</i> .. .. .                                                                                                            | 49 J. P. 198 .. .. .                                                                                                       | 253               |
| <i>v. Jones</i> .. .. .                                                                                                                      | 52 L. T. 40, 33 W. R. 452, W. N. 1885, 3 .. .. .                                                                           | 479               |
| <i>ody's Trusts, Re</i> .. .. .                                                                                                              | 14 Q. B. D. 849, 54 L. J. M. C. 130, 33 W. R. 705, 49 J. P. 678, W. N. 1885, 224 .. .. .                                   | 374               |
| <i>ound v. Higher Bebington Local Board</i>                                                                                                  | 15 Q. B. D. 300, 54 L. J. Q. B. 85, 33 W. R. 537 .. .. .                                                                   | 506               |
| <i>s v. Arnold</i> .. .. .                                                                                                                   | 30 Ch. D. 291 .. .. .                                                                                                      | 230               |
| <i>ll v. Phillips. Re Powers</i> .. .. .                                                                                                     | 14 Q. B. D. 73, 548, 54 L. J. Q. B. 146, 291, 52 L. T. 258, 53 L. T. 446, 33 W. R. 212, 48 J. P. 454, 49 J. P. 516 .. .. . | 268               |
| <i>Warren, Checkley, and Bromwich</i> ..                                                                                                     | 15 Q. B. D. 239, 54 L. J. Q. B. 529, 52 L. T. 782, 33 W. R. 714, 49 J. P. 597 .. .. .                                      | 37                |
| <i>, Ex parte. Re Linton (or Linton v. on)</i> .. .. .                                                                                       | W. N. 1885, 54, 78 .. .. .                                                                                                 | 99                |
| <i>ife Assurance Co. v. Atkinson</i> .. .. .                                                                                                 | 52 L. T. 796 .. .. .                                                                                                       | 361               |
| <i>-Berlyn (Transvaal) Gold Fields v. lle</i> .. .. .                                                                                        | 54 L. J. Ch. 207, 51 L. T. 572, 33 W. R. 251, W. N. 1884, 218 .. .. .                                                      | 329               |
| <i>eld v. Jones (No. 2)</i> .. .. .                                                                                                          | 14 Q. B. D. 725, 53 L. T. 536, 33 W. R. 457, 49 J. P. 630 .. .. .                                                          | 168               |
| <i>v. Lloyd</i> .. .. .                                                                                                                      | 27 Ch. D. 646, 54 L. J. Ch. 66, 51 L. T. 898 .. .. .                                                                       | 467               |
| <i>&amp; Sons' Trade Mark, Re. Lloyd v. omley</i> .. .. .                                                                                    | 29 Ch. D. 219, 54 L. J. Ch. 748, 33 W. R. 728 .. .. .                                                                      | 102               |
| <i>Generale Italian, Re</i> .. .. .                                                                                                          | 29 Ch. D. 221, 54 L. J. Ch. 931, 52 L. T. 469, 33 W. R. 781 .. .. .                                                        | 264               |
| <i>Banking Co. v. Jones</i> .. .. .                                                                                                          | 51 L. T. 562 .. .. .                                                                                                       | 416               |
| <i>ood v. Sikes</i> .. .. .                                                                                                                  | 29 Ch. D. 921, 54 L. J. Ch. 1087, 53 L. T. 174, 33 W. R. 668 .. .. .                                                       | 190               |
| <i>ase, Re (an infant)</i> .. .. .                                                                                                           | W. N. 1885, 137 .. .. .                                                                                                    | 93                |
| <i>and City Land and Building Co., Re — Lancashire Fire Insurance Co. v. sh American Association (or British ican Assurance Co.)</i> .. .. . | 54 L. J. Q. B. 302, 52 L. T. 385 .. .. .                                                                                   | 354               |
| <i>— Yorkshire Bank v. Beeton</i> .. .. .                                                                                                    | 15 Q. B. D. 457, 54 L. J. Q. B. 568, 34 W. R. 31 .. .. .                                                                   | 208               |
| <i>— v. Cooper</i> .. .. .                                                                                                                   | 15 Q. B. D. 7, 473, 54 L. J. Q. B. 495, 33 W. R. 751 .. .. .                                                               | 326               |

| Name of Case.                                                               | Reference to Reports.                                                                  | Column of Digest. |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------|
| London, Chatham, and Dover Railway Co. v. South Eastern Railway Co. .. .. . | 53 L. T. 109 .. .. .                                                                   | 358               |
| — Land Co. v. Harris .. .. .                                                | W. N. 1885, 137 .. .. .                                                                | 484               |
| — School Board v. Wood .. .. .                                              | 15 Q. B. D. 415, 54 L. J. M. C. 145                                                    | 142               |
| —, Tilbury and Southend Railway Co. v. Kirk and Randall .. .. .             | 51 L. T. 599 .. .. .                                                                   | 330               |
| — Wharf (or Wharfing, or Wharfage) and Warehouse Co., Re .. .. .            | 54 L. J. Ch. 1137, 53 L. T. 112, 33 W. R. 836, W. N. 1885, 163 ..                      | 198               |
| Longstaff (or Longstaffe), Re. Blenkarn v. Longstaffe .. .. .               | 54 L. J. Ch. 516, 52 L. T. 681, W. N. 1884, 216 .. .. .                                | 336               |
| Lovat Peerage, The .. .. .                                                  | 10 App. Cas. 763 .. .. .                                                               | 290               |
| Love, Re. Hill v. Spurgeon .. .. .                                          | 29 Ch. D. 348, 54 L. J. Ch. 816, 52 L. T. 398, 33 W. R. 449 ..                         | 474               |
| Love v. Hills. Re Miller and Miller. Re French .. .. .                      | 54 L. J. Ch. 205, 51 L. T. 853, 33 W. R. 210, W. N. 1884, 234 ..                       | 440               |
| Lowe v. Fox .. .. .                                                         | 15 Q. B. D. 667, 54 L. J. Q. B. 561, 34 W. R. 144 .. .. .                              | 228, 233          |
| Lowes v. Maughan and Fearon .. .. .                                         | 1 C. & E. 340 .. .. .                                                                  | 366               |
| Lowry v. Collard .. .. .                                                    | 55 L. J. Q. B. 18, 34 W. R. 75, W. N. 1885, 197 .. .. .                                | 281               |
| Lulham, Re. Brinton v. Lulham .. .. .                                       | 53 L. J. Ch. 928, 53 L. T. 9, 33 W. R. 788, W. N. 1884, 186 ..                         | 495               |
| Lumb v. Osburn .. .. .                                                      | W. N. 1884, 218 .. .. .                                                                | 335               |
| Lund v. Campbell .. .. .                                                    | 14 Q. B. D. 821, 54 L. J. Q. B. 281, 33 W. R. 510 .. .. .                              | 320               |
| Lybbe v. Hart .. .. .                                                       | 29 Ch. D. 8, 54 L. J. Ch. 860, 52 L. T. 634 .. .. .                                    | 29                |
| Lynch v. Lynch .. .. .                                                      | 10 P. D. 183, 54 L. J. P. 93, 34 W. R. 47 .. .. .                                      | 331               |
| Lynch (or Blossie) v. Wheatley .. .. .                                      | 14 Q. B. D. 504, 54 L. J. Q. B. 289, 53 L. T. 49, 1 Colt. 364 .. ..                    | 280               |
| Lyndon's Trade Mark, Re .. .. .                                             | 54 L. J. Ch. 972, W. N. 1885, 160 ..                                                   | 465               |
| Lytton (Earl) v. Devey .. .. .                                              | 54 L. J. Ch. 293, 52 L. T. 121, W. N. 1884, 203 .. .. .                                | 225               |
| <b>M.</b>                                                                   |                                                                                        |                   |
| M. (otherwise D.) v. D. .. .. .                                             | 10 P. D. 75, 54 L. J. P. 68, 33 W. R. 657 .. .. .                                      | 177               |
| — v. — (No. 2) .. .. .                                                      | 10 P. D. 175, 34 W. R. 48 .. .. .                                                      | 332               |
| McBean v. Dean (or Deane) .. .. .                                           | 30 Ch. D. 520, 55 L. J. Ch. 19, 33 W. R. 924 .. .. .                                   | 137               |
| McCartan v. N. E. Ry. Co. .. .. .                                           | 54 L. J. Q. B. 441 .. .. .                                                             | 377               |
| McClellan, Re. McClellan v. McClellan .. .. .                               | 29 Ch. D. 495, 54 L. J. Ch. 659, 52 L. T. 741, 33 W. R. 888 .. ..                      | 312               |
| McConnell, Re. Sanders (or Saunders) v. McConnell .. .. .                   | 29 Ch. D. 76, 52 L. T. 80, 33 W. R. 359 .. .. .                                        | 310               |
| Macdonald, Re. Dowling v. Stewart .. .. .                                   | W. N. 1885, 98 .. .. .                                                                 | 165               |
| McGibbon v. Abbott .. .. .                                                  | 10 App. Cas. 653, 54 L. J. P. C. 39                                                    | 77                |
| McGowan (or McGavan), In the Goods of. In the Goods of Earle .. .. .        | 10 P. D. 196, 54 L. J. P. 95, 34 W. R. 48 .. .. .                                      | 5                 |
| McIlwraith (or M'Ilwraith) v. Green .. .. .                                 | 13 Q. B. D. 897, 14 Q. B. D. 766, 54 L. J. Q. B. 41, 51 L. T. 822, 52 L. T. 82 .. .. . | 348               |
| Mackay, Ex parte. Re Page .. .. .                                           | 14 Q. B. D. 401, 33 W. R. 825 .. ..                                                    | 30                |
| Maclean v. Currie .. .. .                                                   | 1 C. & E. 361 .. .. .                                                                  | 210               |
| Macreight, Re. Paxton (or Preston) v. Macreight .. .. .                     | 30 Ch. D. 165, 55 L. J. Ch. 28, 53 L. T. 146, 33 W. R. 838 .. ..                       | 135               |

| Name of Case.                                                                  | Reference to Reports.                                                                                                                                             | Column of Digest. |
|--------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Maddever, Re. Three Towns Banking Co. v. Maddever .. .. .                      | 27 Ch. D. 523, 53 L. J. Ch. 998, 52 L. T. 35, 33 W. R. 286 ..                                                                                                     | 168               |
| Magarrill v. Whitehaven Overseers .. ..                                        | 55 L. J. Q. B. 38, 49 J. P. 743 ..                                                                                                                                | 279               |
| Magee, Ex parte. Re Magee .. .. .                                              | 15 Q. B. D. 332, 54 L. J. Q. B. 394, 33 W. R. 655 .. ..                                                                                                           | 31                |
| Malen, In the Goods of .. .. .                                                 | 54 L. J. P. 91, 33 W. R. 825 ..                                                                                                                                   | 367               |
| Manchester and Oldham Bank, Re .. ..                                           | 54 L. J. Ch. 926, W. N. 1885, 169 14 Q. B. D. 209, 54 L. J. Q. B. 103, 51 L. T. 698, 52 L. T. 598, 33 W. R. 491, 49 J. P. 181, 4 Ry. Cas. 467, W. N. 1885, 222 .. | 97                |
| ——— S. & L. Ry. Co. v. Denaby Main Colliery Co. .. .. .                        | 27 Ch. D. 166, 54 L. J. Ch. 143, 51 L. T. 380, 32 W. R. 941, 48 J. P. 23 .. ..                                                                                    | 383               |
| Mander v. Harris. Re March .. .. .                                             | 10 App. Cas. 378, 12 C. of S. Cas. (H. L.) 52 .. ..                                                                                                               | 181               |
| Mann v. Brodie .. .. .                                                         | W. N. 1885, 68 .. ..                                                                                                                                              | 400               |
| Manners v. Mew (No. 1) .. .. .                                                 | 29 Ch. D. 725, 54 L. J. Ch. 909, 53 L. T. 84 .. ..                                                                                                                | 285               |
| ——— v. ——— (No. 2) .. .. .                                                     | 30 Ch. D. 480, 34 W. R. 111 ..                                                                                                                                    | 263               |
| Manning, Re .. .. .                                                            | 54 L. J. Ch. 883, 52 L. T. 806, 33 W. R. 727, W. N. 1885, 112 ..                                                                                                  | 40                |
| Mansel, Re. Rhodes v. Jenkins (or Jenkin) ..                                   | 54 L. J. Ch. 982, 53 L. T. 496, W. N. 1885, 129 .. ..                                                                                                             | 474               |
| Mansel v. Clanricarde. Mansel v. Norton ..                                     | W. N. 1884, 209 .. ..                                                                                                                                             | 335               |
| Mansel's Settled Estates, Re .. .. .                                           | 29 Ch. D. 159, 54 L. J. Ch. 624, 52 L. T. 504, 33 W. R. 442 ..                                                                                                    | 407               |
| Mansell, Ex parte. Re Chillington Iron Co. ..                                  | 14 Q. B. D. 177, 54 L. J. Q. B. 245, 52 L. T. 202, 33 W. R. 142 ..                                                                                                | 99                |
| ———, Re. Ex parte Newitt .. .. .                                               | 30 Ch. D. 92, 54 L. J. Ch. 1008, 53 L. T. 289, 33 W. R. 832 ..                                                                                                    | 43                |
| Manton v. Tabois .. .. .                                                       | 27 Ch. D. 166, 54 L. J. Ch. 143, 51 L. T. 380, 32 W. R. 941, 48 J. P. 23 .. ..                                                                                    | 511               |
| March, Re. Mander v. Harris .. .. .                                            | 9 App. Cas. 873, 54 L. J. P. 18, 52 L. T. 361, 33 W. R. 281, 5 Asp. M. C. 371 .. ..                                                                               | 181               |
| "Margaret," The. Cayzer, Irvine & Co. v. Carron Co. .. .. .                    | 10 P. D. 4, 54 L. J. P. 8, 51 L. T. 906, 33 W. R. 432, 5 Asp. M. C. 339 .. ..                                                                                     | 431               |
| "Marion," The .. .. .                                                          | 30 Ch. D. 127, 54 L. J. Ch. 833, 53 L. T. 216, 33 W. R. 871 ..                                                                                                    | 307               |
| Marlborough's (Duke) Settlement, 1866, Re. M. v. Marjoribanks .. .. .          | 26 Ch. D. 783, 54 L. J. Ch. 640, 51 L. T. 417, 33 W. R. 28 ..                                                                                                     | 403               |
| Marsden, Re. Bowden v. Layland .. .. .                                         | 30 Ch. D. 598 .. ..                                                                                                                                               | 229               |
| Marseilles Extension Ry. and Land Co., Re. Smallpage's and Brandon's Claims .. | 15 Q. B. D. 340, 54 L. J. Q. B. 557, 53 L. T. 418 .. ..                                                                                                           | 48, 100           |
| Marsh, Ex parte. Re Marsh .. .. .                                              | 10 App. Cas. 325 .. ..                                                                                                                                            | 445               |
| Marshall v. Maclure .. .. .                                                    | 54 L. J. Ch. 1071, 53 L. T. 34, W. N. 1885, 135 .. ..                                                                                                             | 108               |
| Martin, Re. Smith v. Martin .. .. .                                            | 33 W. R. 216 .. ..                                                                                                                                                | 503               |
| ——— v. Connah's Quay Alkali Co. .. ..                                          | 30 Ch. D. 544, 54 L. J. Ch. 1164, 53 L. T. 530, 34 W. R. 8 ..                                                                                                     | 240               |
| ——— v. Lacon. Re Christmas .. .. .                                             | 21 Ch. D. 857, 51 L. J. Ch. 594, 52 L. T. 706, 33 W. R. 555, W. N. 1885, 41 .. ..                                                                                 | 74                |
| Martinson v. Clowes .. .. .                                                    | 26 Ch. D. 745, 54 L. J. Ch. 1016, 50 L. T. 552, 32 W. R. 734 ..                                                                                                   | 260, 448          |
| Martyn, Re. Re Toutt's Will .. .. .                                            |                                                                                                                                                                   | 479               |

| Name of Case.                                                                | Reference to Reports.                                                                                      | Column of Digest. |
|------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-------------------|
| Mason v. Rhodes .. .. .                                                      | 53 L. T. 322 .. .. .                                                                                       | 261               |
| Matwief v. Whytock. The "Yourri." The "Spearman." .. .. .                    | 10 App. Cas. 276, 53 L. T. 29 .. .                                                                         | 428               |
| Maughan, Re. Ex parte Monkhouse .. .. .                                      | 14 Q. B. D. 956, 54 L. J. Q. B. 128, 33 W. R. 308 .. .. .                                                  | 29                |
| May, Ex parte. Re Brightmore .. .. .                                         | 14 Q. B. D. 37, 51 L. T. 710, 33 W. R. 598 .. .. .                                                         | 41                |
| ————— Re House .. .. .                                                       | 25 Ch. D. 231, 28 Ch. D. 516, 54 L. J. Ch. 338, 52 L. T. 78, 33 W. R. 917 .. .. .                          | 270               |
| Meager v. Pellew (or Ex parte Meager. Re Pellew) .. .. .                     | 14 Q. B. D. 973, 53 L. T. 67, 33 W. R. 573 .. .. .                                                         | 15                |
| Meere, Re. Kilford v. Blaney (or Blaney) .. .. .                             | 29 Ch. D. 145, 31 Ch. D. 56, 53 L. T. 17, 33 W. R. 630, 34 W. R. 109 .. .. .                               | 157               |
| Melliss v. Shirley and Freemantle Local Board of Health .. .. .              | 14 Q. B. D. 911, 54 L. J. Q. B. 408, 52 L. T. 544, W. N. 1885, 224 .. .. .                                 | 370               |
| Mellor v. Swire. Re Swire .. .. .                                            | 30 Ch. D. 239, 53 L. T. 205, 33 W. R. 785 .. .. .                                                          | 340               |
| ———, Cunningham & Co. v. Royal Exchange Shipping Co. Armstrong & Co. .. .. . | W. N. 1885, 172 .. .. .                                                                                    | 312               |
| "Merchant Prince," The .. .. .                                               | 10 P. D. 139, 54 L. J. P. 79 .. .. .                                                                       | 429               |
| Merchant Taylors Co., Re .. .. .                                             | 29 Ch. D. 209, 30 Ch. D. 28, 54 L. J. Ch. 585, 867, 52 L. T. 775, 33 W. R. 542, 693 .. .. .                | 441               |
| Meredith, Re. Meredith v. Facey .. .. .                                      | 29 Ch. D. 745, 54 L. J. Ch. 1106, 33 W. R. 778 .. .. .                                                     | 122               |
| "Meredith," The. White v. Ditchfield .. .. .                                 | 10 P. D. 69, 52 L. T. 520, 5 Asp. M. C. 400 .. .. .                                                        | 435               |
| Mersey Docks and Harbour Board v. Llaneilian Overseers .. .. .               | 14 Q. B. D. 770, 54 L. J. Q. B. 49, 52 L. T. 118, 33 W. R. 97, 49 J. P. 164, 5 Asp. M. C. 248, 358 .. .. . | 296               |
| ——— Steel and Iron Co. v. Naylor & Co. .. .. .                               | 9 App. Cas. 434, 53 L. J. Q. B. 497, 51 L. T. 637, 32 W. R. 989 .. .. .                                    | 111               |
| Mertens v. Walley. Re Sergeant .. .. .                                       | 26 Ch. D. 575, 54 L. J. Ch. 159, 32 W. R. 987 .. .. .                                                      | 520               |
| Merthyr Tydvil Guardians (or Reg.) v. Stepney Guardians .. .. .              | 54 L. J. M. C. 12, 52 L. T. 959, 49 J. P. 164, W. N. 1884, 135 .. .. .                                     | 292               |
| Metropolitan Bank v. Pooley .. .. .                                          | 10 App. Cas. 210, 54 L. J. Q. B. 449, 53 L. T. 163, 33 W. R. 709, 49 J. P. 756 .. .. .                     | 70                |
| ————— Board of Works v. Anthony & Co. .. .. .                                | 54 L. J. M. C. 39, 33 W. R. 166, 49 J. P. 229 .. .. .                                                      | 251               |
| ————— v. Lathey .. .. .                                                      | 49 J. P. 245 .. .. .                                                                                       | 250               |
| ————— Electric Light and Power Co., Re. Ex parte Leaver .. .. .              | 51 L. T. 817 .. .. .                                                                                       | 101               |
| Ex parte Offor .. .. .                                                       | 54 L. J. Ch. 253, 51 L. T. 816 .. .. .                                                                     | 336               |
| Michael, Re. Dessau v. Lewin .. .. .                                         | 52 L. T. 609, W. N. 1885, 104 .. .. .                                                                      | 336               |
| Middlesborough, &c., Building Society, Re (No. 1) .. .. .                    | 54 L. J. Ch. 592, 51 L. T. 743, 49 J. P. 278, W. N. 1884, 208 .. .. .                                      | 65                |
| (No. 2) .. .. .                                                              | 53 L. T. 203 .. .. .                                                                                       | 65                |
| ————— Firebrick Co., Re .. .. .                                              | 52 L. T. 98, 33 W. R. 339, W. N. 1885, 7 .. .. .                                                           | 99                |
| Midland Ry. Co. v. Miles .. .. .                                             | 30 Ch. D. 634, 53 L. T. 381, 34 W. R. 136 .. .. .                                                          | 380               |
| Miles, Ex parte. Re Isaacs .. .. .                                           | 15 Q. B. D. 39, 54 L. J. Q. B. 566 .. .. .                                                                 | 392               |

| Name of Case.                                                                                          | Reference to Reports.                                                                                    | Column of Digest. |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|-------------------|
| Miles v. New Zealand Alford Estate Co. ..                                                              | 54 L. J. Ch. 1035, 53 L. T. 219, }<br>W. N. 1885, 142 .. .. }                                            | 90                |
| Milford Haven Ry. and Estate Co. v. Mowatt.<br>Re Lake and Taylor's Mortgage. Spain v.<br>Mowatt .. .. | 28 Ch. D. 402, 54 L. J. Ch. 567, 33 }<br>W. R. 597 .. .. }                                               | 487               |
| Miller and Miller, Re. Re French. Love v.<br>Hills .. ..                                               | 54 L. J. Ch. 205, 51 L. T. 853, 33 }<br>W. R. 210, W. N. 1884, 234 .. }                                  | 440               |
| Miller's Case. Re Norwich Equitable Fire<br>Ass. Co. .. ..                                             | 54 L. J. Ch. 141, 51 L. T. 619, 33 }<br>W. R. 271 .. .. }                                                | 82                |
| Millichamp, Re. Goodale v. Bullock .. ..                                                               | 52 L. T. 758, W. N. 1885, 62 .. }<br>14 Q. B. D. 68, 54 L. J. Q. B. 202, }                               | 528               |
| Millward (or Milward) v. Midland Ry. Co. ..                                                            | 52 L. T. 255, 33 W. R. 366, 49 }<br>J. P. 453 .. .. }                                                    | 241               |
| Milner, Ex parte. Re Milner .. ..                                                                      | 15 Q. B. D. 605, 54 L. J. Q. B. 425, }<br>33 W. R. 867 .. .. }                                           | 26                |
| —— (or Milnes) v. Sherwin .. ..                                                                        | 33 W. R. 927, W. N. 1885, 169 .. }                                                                       | 401               |
| Minton v. Minton .. ..                                                                                 | 53 L. T. 534, W. N. 1885, 164 .. }                                                                       | 519               |
| Mitchell, Re. Mitchell v. Mitchell .. ..                                                               | 54 L. J. Ch. 342, 52 L. T. 178, W. N. }<br>1884, 242 .. .. }                                             | 365               |
| —— v. Darley Main Colliery Co. .. ..                                                                   | 14 Q. B. D. 125, 53 L. J. Q. B. 471, }<br>52 L. T. 675, 32 W. R. 947, 48 }                               | 130               |
| —— & Co.'s Trade-mark, Re. Houghton<br>and Hallmark's Trade-mark, Re .. ..                             | 54 L. J. Ch. 216, 809, }<br>28 Ch. 666 } 51 L. T. 900, 52 }<br>L. T. 575, 33 W. R. }<br>148, 408 .. .. } | 470               |
| Mogg v. Clark .. ..                                                                                    | 15 Q. B. D. 82, 16 Q. B. D. 79, }<br>54 L. J. Q. B. 334, 55 L. J. Q. B. }<br>69, 34 W. R. 66 .. .. }     | 247               |
| Mogul Steamship Co. v. McGregor & Co. ..                                                               | 15 Q. B. D. 476, 54 L. J. Q. B. 540, }<br>53 L. T. 268, 49 J. P. 646 .. }                                | 106               |
| Monckton and Gilzean, Re .. ..                                                                         | 27 Ch. D. 555, 54 L. J. Ch. 257, 51 }<br>L. T. 320, 32 W. R. 973 .. }                                    | 489               |
| Monkhouse, Ex parte. Re Maughan .. ..                                                                  | 14 Q. B. D. 956, 54 L. J. Q. B. 128, }<br>33 W. R. 308 .. .. }                                           | 29                |
| Montagu, Re. Re Wroughton. Montagu v.<br>Festing .. ..                                                 | 28 Ch. D. 82, 54 L. J. Ch. 397, 33 }<br>W. R. 322 .. .. }                                                | 189               |
| —— v. Sandwich (Earl) .. ..                                                                            | W. N. 1885, 86 .. ..                                                                                     | 517               |
| Moody & Yates' Contract, Re .. ..                                                                      | 28 Ch. 661, 30 Ch. D. 344, 54 L. J. }<br>Ch. 584, 886, 52 L. T. 419, 33 }<br>W. R. 362, 785 .. .. }      | 493               |
| Moore, Ex parte. Re Faithfull .. ..                                                                    | 14 Q. B. D. 627, 54 L. J. Q. B. 190, }<br>52 L. T. 376, 33 W. R. 438 .. }                                | 20                |
| ——, Re. Moore v. Johnson .. ..                                                                         | 54 L. J. Ch. 432, 52 L. T. 510, 33 }<br>W. R. 447, W. N. 1885, 17 .. }                                   | 12                |
| Moorhouse v. Linney. Thorpe v. Linney ..                                                               | 15 Q. B. D. 273, 53 L. T. 343, 33 }<br>W. R. 704, 49 J. P. 471 .. }                                      | 268               |
| Mordy & Cowman, Re .. ..                                                                               | 51 L. T. 721 .. ..                                                                                       | 485               |
| Morewood, Re. Errington v. Morewood ..                                                                 | W. N. 1885, 51 .. ..                                                                                     | 304               |
| Morgan's Case. Re Glamorganshire Banking<br>Co. .. ..                                                  | 28 Ch. D. 620, 54 L. J. Ch. 765, 51 }<br>L. T. 623, 33 W. R. 209 .. }                                    | 80                |
| Morris & Sons v. Lowe & Co. .. ..                                                                      | 34 W. R. 45 .. ..                                                                                        | 116               |
| ——, Re. Bucknill v. Morris .. ..                                                                       | 54 L. J. Ch. 388, 52 L. T. 462, 33 }<br>W. R. 445, W. N. 1885, 31 .. }                                   | 512               |
| ——. Salter v Att.-Gen. .. ..                                                                           | 52 L. T. 840, 33 W. R. 895, W. N. }<br>1885, 89 .. .. }                                                  | 513               |
| Morrison, Ex parte. Re Gillespie (No. 1) ..                                                            | 14 Q. B. D. 385, 52 L. T. 55, 33 }<br>W. R. 751 .. .. }                                                  | 23                |

| Name of Case.                                                             | Reference to Reports.                                                                       | Column of Digest. |
|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|-------------------|
| Morrison, Ex parte. Re Gillespie. Ex parte Reid (No. 2) .. .. .           | 14 Q. B. D. 963, 54 L. J. Q. B. 342, 52 L. T. 692, 33 W. R. 707 ..                          | 27, 33            |
| —, Wood & Co. v. G. E. Ry. Co. ..                                         | 53 L. T. 384, W. N. 1885, 175 ..                                                            | 223               |
| — v. West Ham Gas Co. {                                                   | 52 L. T. 817, 33 W. R. 799, 49 J. P. 662, W. N. 1885, 138 ..                                | 169               |
| Mortimer, Re. Griffiths v. Mortimer ..                                    | 54 L. J. Ch. 414, 52 L. T. 383, 33 W. R. 441, W. N. 1885, 30 ..                             | 520               |
| — v. Wilson .. .. .                                                       | 33 W. R. 927 ..                                                                             | 454               |
| Moss, Ex parte. Ex parte Hawkes. Re Toward .. .. .                        | 14 Q. B. D. 310, 54 L. J. Q. B. 126, 52 L. T. 188 ..                                        | 45                |
| —, Re. Levy v. Sewill .. .. .                                             | 31 Ch. D. 90, 53 L. J. Ch. 87, 34 W. R. 59, W. N. 1885, 180 ..                              | 265               |
| Mullett, Re. Mullett v. Haworth .. ..                                     | W. N. 1885, 130 ..                                                                          | 477               |
| Munby v. Ross. Re Coulman .. .. .                                         | 30 Ch. D. 186, 55 L. J. Ch. 34, 53 L. T. 560 ..                                             | 297               |
| Munday, Re. Ex parte Allam .. .. .                                        | 14 Q. B. D. 43, 33 W. R. 231 ..                                                             | 54                |
| Mundy, Re. Ex parte Shead .. .. .                                         | 15 Q. B. D. 338 ..                                                                          | 23                |
| Munster v. Cox and Clark .. .. .                                          | 11 Q. B. D. 435, 10 App. Cas., 680, 52 L. J. Q. B. 409, 53 L. T. 474, 31 W. R. 880 ..       | 346               |
| Murray v. Glasgow & South-Western Railway Co. .. .. .                     | 11 C. of S. Cas. 205, 4 Ry. Cas. 456 ..                                                     | 383               |
| — v. Scott; Agnew v. Murray; Brimelow v. Murray .. .. .                   | 9 App. Cas. 519, 53 L. J. Ch. 745, 51 L. T. 462, 33 W. R. 173 ..                            | 61                |
| Musgrave v. Brooke. Re Brooke .. ..                                       | 26 Ch. D. 792, 54 L. J. Ch. 102, 33 W. R. 211 ..                                            | 505               |
| Musson v. Hargreaves. Re Hargreaves ..                                    | W. N. 1885, 174 ..                                                                          | 512               |
| Mutual Aid Permanent Benefit Building Society, Re. Ex parte Anson .. .. . | 29 Ch. D. 182, 30 Ch. D. 434, 54 L. J. Ch. 493, 52 L. T. 406, 33 W. R. 575, 34 W. R. 143 .. | 63                |
| N.                                                                        |                                                                                             |                   |
| Nacupai Gold Mining Co., Re .. .. .                                       | 28 Ch. D. 65, 54 L. J. Ch. 109, 51 L. T. 900, 33 W. R. 117 ..                               | 100               |
| Nally v. The Queen .. .. .                                                | 16 L. R. Ir. 1, 15 Cox C. C. 638 ..                                                         | 70                |
| Nash v. Wooderson .. .. .                                                 | 52 L. T. 49, 33 W. R. 301, W. N. 1884, 210 ..                                               | 484               |
| "Nasmyth," The .. .. .                                                    | 10 P. D. 41, 54 L. J. P. 63, 52 L. T. 392, 33 W. R. 736, 5 Asp. M. C. 364 ..                | 435               |
| National Arms and Ammunition Co., Re. Ex parte Birmingham (Mayor) .. .. . | 28 Ch. D. 474, 54 L. J. Ch. 673, 52 L. T. 237, 33 W. R. 585, 49 J. P. 90 ..                 | 88                |
| Neck, Re. Ex parte Broad .. .. .                                          | 13 Q. B. D. 740, 54 L. J. Q. B. 79, 51 L. T. 388, 32 W. R. 912 ..                           | 49                |
| Needham, Re. Robinson v. Needham ..                                       | 54 L. J. Ch. 75 ..                                                                          | 504               |
| Nelson, Son, & Hastings, Re .. .. .                                       | 30 Ch. D. 1, 54 L. J. Ch. 998, 53 L. T. 415, 33 W. R. 645 ..                                | 445               |
| Newall v. Royal Exchange Shipping Co. ..                                  | 33 W. R. 342, 868 ..                                                                        | 423               |
| "Newbattle," The .. .. .                                                  | 10 P. D. 33, 54 L. J. P. 16, 52 L. T. 15, 33 W. R. 318, 5 Asp. M. C. 356 ..                 | 307               |
| Newbould v. Smith .. .. .                                                 | 29 Ch. D. 882, 53 L. T. 137, 33 W. R. 690 ..                                                | 147, 230          |
| Newhaven Local Board v. Newhaven School Board .. .. .                     | 30 Ch. D. 350, 53 L. T. 571, 34 W. R. 172 ..                                                | 374               |



| Name of Case.                                                            | Reference to Reports.                                                                            | Column of Digest. |
|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------|
| Newitt, Ex parte. Re Mansel .. ..                                        | 14 Q. B. D. 177, 54 L. J. Q. B. 245, 52 L. T. 202, 33 W. R. 142 ..                               | 43                |
| Newlands v. National Employers' Association .. ..                        | 54 L. J. Q. B. 428, 53 L. T. 242, 49 J. P. 628 ..                                                | 366               |
| Newman v. Newman .. ..                                                   | 28 Ch. D. 674, 54 L. J. Ch. 598, 52 L. T. 422, 33 W. R. 505 ..                                   | 262               |
| Newson v. Pender .. ..                                                   | 27 Ch. D. 43, 52 L. T. 9, 33 W. R. 243 ..                                                        | 227               |
| Newton v. Chapman. Re Chapple .. ..                                      | 27 Ch. D. 584, 51 L. T. 748, 33 W. R. 336 ..                                                     | 475               |
| Newton-in-Makerfield Improvement Commissioners v. Lancashire JJ. .. ..   | 15 Q. B. D. 25, 54 L. J. M. C. 1, 51 L. T. 707, 52 L. T. 337, 33 W. R. 488, 49 J. P. 149 ..      | 175               |
| Newton's Patents, Re .. ..                                               | 9 App. Cas. 592, 52 L. T. 329 ..                                                                 | 286               |
| New Windsor (Mayor) v. Stovell .. ..                                     | 27 Ch. D. 665, 54 L. J. Ch. 113, 51 L. T. 626, 33 W. R. 223 ..                                   | 371               |
| Nichols, Ex parte. Ex parte Warren. Re Holland .. ..                     | 15 Q. B. D. 48, 54 L. J. Q. B. 320, 53 L. T. 68, 33 W. R. 459, 572 ..                            | 421               |
| — (or Nicholls) to Nixey & Coleclough .. ..                              | 29 Ch. D. 1005, 52 L. T. 803, 33 W. R. 840 ..                                                    | 24                |
| Nicholson v. Kirk. Re Kirk.. ..                                          | 52 L. T. 346, W. N. 1885, 7 ..                                                                   | 508               |
| Nicol v. Nicol .. ..                                                     | 30 Ch. D. 143, 54 L. J. Ch. 1042, 53 L. T. 140 ..                                                | 184               |
| Nicol's Case. Re Florence Land, &c., Co. Tufnell & Ponsonby's Case .. .. | 29 Ch. D. 421, 52 L. T. 933 ..                                                                   | 81                |
| Nielsen v. Wait .. ..                                                    | 14 Q. B. D. 516, 16 Q. B. D. 67, 34 W. R. 33 ..                                                  | 432               |
| Nixon v. Verry .. ..                                                     | 29 Ch. D. 196, 54 L. J. Ch. 736, 53 L. T. 18, 33 W. R. 633 ..                                    | 415               |
| Noel v. Noel .. ..                                                       | 10 P. D. 179, 54 L. J. P. 73, 33 W. R. 552 ..                                                    | 334               |
| Nolloth v. Simplified Permanent Benefit Building Society .. ..           | 34 W. R. 73 ..                                                                                   | 65                |
| Norris, Re. Allen v. Norris .. ..                                        | 27 Ch. D. 333, 53 L. J. Ch. 913, 51 L. T. 593, 32 W. R. 955 ..                                   | 473               |
| North British Railway Co. v. Perth (Lord Provost) .. ..                  | 10 App. Cas. 579 ..                                                                              | 398               |
| Northern's Estate, Re. Salt v. Pym .. ..                                 | 28 Ch. D. 153, 54 L. J. Ch. 273, 52 L. T. 173, 33 W. R. 336 ..                                   | 514               |
| Northern Counties of England Insurance Co. v. Whipp .. ..                | 26 Ch. D. 482, 53 L. J. Ch. 629, 51 L. T. 806, 32 W. R. 626 ..                                   | 262               |
| Norton v. Compton (No. 2). Re Compton .. ..                              | 30 Ch. D. 15, 54 L. J. Ch. 904, 53 L. T. 410 ..                                                  | 158               |
| — v. Fenwick .. ..                                                       | 54 L. J. Ch. 632, 52 L. T. 341, W. N. 1885, 60 ..                                                | 323               |
| — v. Johnston (or Johnstone) .. ..                                       | 30 Ch. D. 649, 34 W. R. 13 ..                                                                    | 2                 |
| Norwich Equitable Fire Insurance Co., Re .. ..                           | 27 Ch. D. 515, 54 L. J. Ch. 254, 51 L. T. 404, 32 W. R. 818, 964 ..                              | 101               |
| —, Re. Brasnett's Case (No. 1) .. ..                                     | 54 L. J. Ch. 227, 51 L. T. 318, 53 L. T. 569, 32 W. R. 1010, W. N. 1884, 175, W. N. 1885, 156 .. | 103               |
| —, Re. — (No. 2) .. ..                                                   | 51 L. T. 620, 33 W. R. 270, W. N. 1884, 223 ..                                                   | 316               |
| —, Re. Miller's Case .. ..                                               | 54 L. J. Ch. 141, 51 L. T. 619, 33 W. R. 271 ..                                                  | 82                |
| Nottingham, &c., Bank, Ex parte. Re Jenkinson .. ..                      | 15 Q. B. D. 441, 54 L. J. Q. B. 601 ..                                                           | 34                |
| Nottingham Patent Brick and Tile Co. v. Butler .. ..                     | 15 Q. B. D. 261, 54 L. J. Q. B. 545 ..                                                           | 486               |

| Name of Case.                                                        | Reference to Reports.                                                                  | Column of Digest. |
|----------------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------|
| Noyes v. Pollock .. .. .                                             | 30 Ch. D. 336, 55 L. J. Ch. 54,<br>53 L. T. 430, 33 W. R. 787 ..                       | 259               |
| "Numida," The. The "Collingrove" ..                                  | 10 P. D. 158, 54 L. J. P. 78, 34<br>W. R. 156 .. .. .                                  | 304               |
| Nutter v. Messageries Maritimes de France ..                         | 54 L. J. Q. B. 527 .. .. .                                                             | 360               |
| O.                                                                   |                                                                                        |                   |
| Oastler, Ex parte. Re Friedlander .. ..                              | 13 Q. B. D. 471, 54 L. J. Q. B. 23,<br>51 L. T. 309, 33 W. R. 126 ..                   | 21                |
| O'Brien v. Tyssen .. .. .                                            | 28 Ch. D. 372, 54 L. J. Ch. 284, 51<br>L. T. 814, 33 W. R. 428 ..                      | 73, 352           |
| Ocean Steamship Co. v. Anderson, Tritton & Co.<br>(No. 2) .. .. .    | 33 W. R. 536 .. .. .                                                                   | 357               |
| Official Receiver, Ex parte. Re Horniblow ..                         | 53 L. T. 155 .. .. .                                                                   | 42                |
| partes. Re Ryley .. .. .                                             | 15 Q. B. D. 329, 54 L. J. Q. B. 420,<br>33 W. R. 656 .. .. .                           | 40                |
| Offer, Ex parte. Re Metropolitan Electric<br>Light, &c., Co. .. .. . | 54 L. J. Ch. 253, 51 L. T. 816 ..                                                      | 336               |
| Oldham v. Stringer .. .. .                                           | 51 L. T. 895, 33 W. R. 251, W. N.<br>1884, 235 .. .. .                                 | 255               |
| Old Mill Co. v. Duckingfield (or Dukinfield)<br>Local Board .. .. .  | 54 L. J. Ch. 160, 51 L. T. 414 ..                                                      | 358               |
| Oram, Ex parte. Re Watson .. .. .                                    | 15 Q. B. D. 399, 52 L. T. 785, 33<br>W. R. 890 .. .. .                                 | 35                |
| Orange to Wright, Re .. .. .                                         | 54 L. J. Ch. 590, 52 L. T. 606,<br>W. N. 1885, 72 .. .. .                              | 483               |
| Oriental Bank Corporation, Re. Ex parte<br>Guillemin (No. 1) .. .. . | 28 Ch. D. 634, 54 L. J. Ch. 322,<br>52 L. T. 167 .. .. .                               | 103               |
| Guillemin (No. 2) .. .. .                                            | 28 Ch. D. 643, 54 L. J. Ch. 327, 52<br>L. T. 170 .. .. .                               | 102               |
| Guillemin (No. 3) .. .. .                                            | 54 L. J. Ch. 327, 52 L. T. 172 ..                                                      | 79                |
| Clayton and Hartas .. .. .                                           | 54 L. J. Ch. 481, 52 L. T. 556 ..                                                      | 103               |
| Orr-Ewing v. Cawdor (Earl) .. .. .                                   | 12 C. of S. Cas. (H. L.) 12, W. N.<br>1884, 214 .. .. .                                | 399               |
| Over-Darwen (Mayor) v. Lancaster J.J. ..                             | 15 Q. B. D. 20, 54 L. J. M. C. 51,<br>51 L. T. 739, 48 J. P. 437 ..                    | 175               |
| Ovey, Re. Broadbent v. Barrow .. .. .                                | 29 Ch. D. 560, 54 L. J. Ch. 752, 52<br>L. T. 849, 33 W. R. 821 ..                      | 71                |
| Owen, Re. Ex parte Payton .. .. .                                    | 52 L. T. 628 .. .. .                                                                   |                   |
| — v. Edwards. Re Edwards .. .. .                                     | 33 W. R. 578, W. N. 1885, 74 ..                                                        | 22, 439           |
| Owens v. Shield .. .. .                                              | 1 C. & E. 356 .. .. .                                                                  | 341               |
| Oxley v. Scarth. Re Pearson .. .. .                                  | 51 L. T. 692 .. .. .                                                                   | 494<br>477        |
| P.                                                                   |                                                                                        |                   |
| Page, Re. Ex parte Mackay .. .. .                                    | 14 Q. B. D. 401, 33 W. R. 825 ..                                                       | 30                |
| — v. Morgan .. .. .                                                  | 15 Q. B. D. 228, 54 L. J. Q. B. 434,<br>53 L. T. 126, 33 W. R. 793 ..                  | 392               |
| — v. Slade .. .. .                                                   | 54 L. J. Ch. 1131, 52 L. T. 961, 33<br>W. R. 701, W. N. 1885, 141 ..                   | 284               |
| Paget v. Marshall .. .. .                                            | 28 Ch. D. 255, 54 L. J. Ch. 575, 51<br>L. T. 351, 33 W. R. 608, 49 J. P.<br>85 .. .. . | 254               |

| Name of Case.                                                       | Reference to Reports.                                                                    | Column of Digest. |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------|-------------------|
| Paget's Will ( <i>or Settled Estates</i> ), Re .. ..                | 30 Ch. D. 161, 55 L. J. Ch. 42, 53 L. T. 90, 33 W. R. 898 ..                             | 406               |
| Paine's Trusts, Re .. ..                                            | 28 Ch. D. 725, 54 L. J. Ch. 735, 52 L. T. 323, 33 W. R. 564 ..                           | 480               |
| "Palermo," The .. ..                                                | 10 P. D. 21, 54 L. J. P. 46, 52 L. T. 390, 33 W. R. 643, 5 Asp. M. C. 369 ..             | 434               |
| "Palomares," The .. ..                                              | 10 P. D. 36, 54 L. J. P. 46, 52 L. T. 57, 33 W. R. 616, 5 Asp. M. C. 343 ..              | 308               |
| Parish v. Poole .. ..                                               | 53 L. T. 35 .. ..                                                                        | 255               |
| Park, Re. Ex parte Koster .. ..                                     | 14 Q. B. D. 597, 54 L. J. Q. B. 389, 52 L. T. 946, 33 W. R. 606 ..                       | 15                |
| Parker Parker, Re. Ex parte Turquand (No. 1) .. ..                  | 14 Q. B. D. 405, 51 L. T. 667, 33 W. R. 752 ..                                           | 30                |
| Parker (R. A.), Re (Solicitor) .. ..                                | 29 Ch. D. 199, 54 L. J. Ch. 959, 52 L. T. 686, 33 W. R. 541 ..                           | 442               |
| — Re. Dearing v. Brooks .. ..                                       | 54 L. J. Ch. 694 .. ..                                                                   | 353               |
| —, Re. Ex parte Turquand ( <i>or Board of Trade</i> ) (No. 2) .. .. | 14 Q. B. D. 407, 15 Q. B. D. 196, 54 L. J. Q. B. 372, 52 L. T. 185, 670, 33 W. R. 262 .. | 33                |
| Parkes ( <i>or Parker</i> ), Re. Ex parte Turquand (No. 3) .. ..    | 14 Q. B. D. 636, 54 L. J. Q. B. 242, 53 L. T. 579, 33 W. R. 437 ..                       | 35, 57            |
| Parnell v. Mort, Liddell & Co. .. ..                                | 29 Ch. D. 325, 53 L. T. 186, 33 W. R. 481 ..                                             | 286               |
| Parr v. "Beeswing" (owners) .. ..                                   | 10 P. D. 18, 54 L. J. P. 7, 51 L. T. 883, 33 W. R. 319, 5 Asp. M. C. 335 ..              | 311               |
| Parrott, Re. Parrott v. Parrott .. ..                               | 53 L. T. 12, W. N. 1885, 127 ..                                                          | 519               |
| Parry & Daggs, Re .. ..                                             | W. N. 1885, 3, 193 .. ..                                                                 | 502               |
| Patience, Re. Patience v. Main .. ..                                | 29 Ch. D. 976, 54 L. J. Ch. 897, 52 L. T. 687, 33 W. R. 500 ..                           | 135               |
| Paull, Re. Re Carthew .. ..                                         | 27 Ch. D. 485, 54 L. J. Ch. 134, 51 L. T. 435, 32 W. R. 940 ..                           | 446               |
| Paxton ( <i>or Preston</i> ) v. Macreight. Re Macreight .. ..       | 30 Ch. D. 165, 55 L. J. Ch. 28, 53 L. T. 146, 33 W. R. 838 ..                            | 135               |
| Payne, Ex parte. Re Sinclair .. ..                                  | 15 Q. B. D. 616 .. ..                                                                    | 43                |
| Payton, Ex parte. Re Owen .. ..                                     | 52 L. T. 628 .. ..                                                                       | 22, 439           |
| Peacock v. Colling .. ..                                            | 54 L. J. Ch. 743, 53 L. T. 620, 33 W. R. 528 ..                                          | 153, 474, 475     |
| Peake, Re. Ex parte Harrison .. ..                                  | 13 Q. B. D. 753, 53 L. J. Ch. 977, 51 L. T. 878 ..                                       | 31                |
| Pearce, Re. Ex parte Crossthwaite ( <i>or Crossthwaite</i> ) .. ..  | 14 Q. B. D. 936, 54 L. J. Q. B. 316, 52 L. T. 518, 33 W. R. 614 ..                       | 421               |
| — v. Foster .. ..                                                   | 15 Q. B. D. 114, 54 L. J. Q. B. 432, 52 L. T. 886, 33 W. R. 919, 50 J. P. 4 ..           | 327               |
| Pearson, Re. Oxley v. Scarth .. ..                                  | 51 L. T. 692 .. ..                                                                       | 477               |
| — v. Att.-Gen. .. ..                                                | W. N. 1885, 164 .. ..                                                                    | 147               |
| — v. Pearson .. ..                                                  | 27 Ch. D. 145, 54 L. J. Ch. 32, 51 L. T. 311, 32 W. R. 1006 ..                           | 171               |
| Peat v. Gott .. ..                                                  | W. N. 1885, 46 .. ..                                                                     | 257               |
| Pellew, Re. Ex parte Meager ( <i>or M. v. P.</i> ) ..               | 14 Q. B. D. 973, 53 L. T. 67, 33 W. R. 573 ..                                            | 15                |
| Percival v. Dunn .. ..                                              | 29 Ch. D. 128, 54 L. J. Ch. 570, 52 L. T. 320 ..                                         | 16, 352           |
| Perkins v. Dangerfield .. ..                                        | 51 L. T. 535, W. N. 1879, 172 ..                                                         | 344               |
| Perry, Ex parte .. ..                                               | 48 J. P. 824 .. ..                                                                       | 269               |

| Name of Case.                                                  | Reference to Reports.                                                                           | Column of Digest. |
|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------|
| Perry v. Barnett .. .. .                                       | 14 Q. B. D. 467, 15 Q. B. D. 388,<br>54 L. J. Q. B. 351, 466, 53 L. T.<br>585 .. .. .           | 456               |
| Perton's Estate, Re .. .. .                                    | W. N. 1885, 164 .. .. .                                                                         | 147               |
| "Peter Graham," The. The "Beta" ..                             | 9 P. D. 134, 51 L. T. 154, 33 W. R.<br>190 .. .. .                                              | 429               |
| Pethybridge v. Burrow. Re Shield ..                            | 53 L. T. 5, W. N. 1885, 83 .. ..                                                                | 170               |
| Petre, Re. Petre v. Petre .. .. .                              | W. N. 1885, 92 .. .. .                                                                          | 160               |
| Pettitt v. Dunn. Re Edmed .. .. .                              | W. N. 1885, 152 .. .. .                                                                         | 516               |
| Phelps' Settlement Trusts, Re .. ..                            | 53 L. T. 27 .. .. .                                                                             | 480               |
| Phelps, Stokes & Co. v. Comber .. ..                           | 29 Ch. D. 813, 54 L. J. Ch. 1017,<br>52 L. T. 873, 33 W. R. 829 ..                              | 51                |
| —— v. Upton Snodsbury Highway Board                            | 49 J. P. 408, W. N. 1885, 92 ..                                                                 | 172               |
| Phillip (or Philips) v. Beall (or Beale) ..                    | 26 Ch. D. 621, 54 L. J. Ch. 80, 50<br>L. T. 433, 32 W. R. 665 ..                                | 360               |
| Phillips v. Phillips .. .. .                                   | 29 Ch. D. 673, 54 L. J. Ch. 943, 53<br>L. T. 403, 33 W. R. 863 ..                               | 212               |
| Philp & Kidd, Ex parte. Re United Stock<br>Exchange .. .. .    | 28 Ch. D. 183, 54 L. J. Ch. 310, 52<br>L. T. 509, 33 W. R. 389 ..                               | 102               |
| Pickard, Re. Turner v. Nicholson .. ..                         | 53 L. T. 293, W. N. 1885, 137 ..                                                                | 282               |
| Pindar v. Robinson. Re Robinson .. ..                          | W. N. 1885, 147 .. .. .                                                                         | 321               |
| Pitman v. Francis .. .. .                                      | 1 C. & E. 355 .. .. .                                                                           | 448               |
| Pitt, Re. Lacy v. Stone .. .. .                                | 53 L. T. 113, 33 W. R. 653, W. N.<br>1885, 61 .. .. .                                           | 74                |
| Pitts' Settlement, Re. Collins v. Pitts ..                     | W. N. 1885, 225, 242 .. .. .                                                                    | 190               |
| Platt v. Mendel. Gurney v. Canterbury<br>(Viscountess) .. .. . | 27 Ch. D. 246, 54 L. J. Ch. 1145,<br>51 L. T. 424, 32 W. R. 918 ..                              | 258               |
| Player, Re. Ex parte Harvey (No. 1) ..                         | 54 L. J. 553 Q. B. .. .. .                                                                      | 496               |
| —— (No. 2) .. .. .                                             | 54 L. J. 554 .. .. .                                                                            | 496               |
| Plowright v. Lambert .. .. .                                   | 52 L. T. 646 .. .. .                                                                            | 492               |
| Plumstead Local Board v. Spackman ..                           | 13 Q. B. D. 878, 10 App. Cas. 229,<br>53 L. J. M. C. 142, 51 L. T. 757,<br>49 J. P. 132 .. .. . | 250               |
| Pointon v. Porrier .. .. .                                     | 49 J. P. 199 .. .. .                                                                            | 69                |
| Pollock, Re. Pollock v. Worrall .. ..                          | 28 Ch. D. 552, 54 L. J. Ch. 489,<br>52 L. T. 718 .. .. .                                        | 503               |
| Pomero v. Pomero & Hadley .. .. .                              | 10 P. D. 174, 54 L. J. P. 93, 34<br>W. R. 124 .. .. .                                           | 177               |
| "Pontida," The .. .. .                                         | 9 P. D. 177, 53 L. J. P. 78, 51<br>L. T. 849, 33 W. R. 38, 5 Asp. M.<br>C. 284, 330 .. .. .     | 423               |
| Poole v. Poole .. .. .                                         | W. N. 1885, 15 .. .. .                                                                          | 282               |
| Pooley's Trusts v. Whetham .. .. .                             | 26 Ch. D. 38, 54 L. J. Ch. 182, 51<br>L. T. 195, 608, 33 W. R. 423 ..                           | 322               |
| Poppleton, Ex parte. Re Thomas .. ..                           | 14 Q. B. D. 379, 54 L. J. Q. B. 336,<br>51 L. T. 602, 33 W. R. 583 ..                           | 99                |
| Porrett v. White .. .. .                                       | 31 Ch. D. 52, 55 L. J. Ch. 79, 53<br>L. T. 514, 34 W. R. 65 ..                                  | 348               |
| Portal & Lamb, Re .. .. .                                      | 30 Ch. D. 50, 54 L. J. Ch. 1013, 51<br>L. T. 392, 33 W. R. 71, 859 ..                           | 518               |
| Portsmouth (Mayor) v. Smith .. .. .                            | 10 App. Cas. 364, 54 L. J. Q. B. 473,<br>53 L. T. 394, 49 J. P. 676 ..                          | 462               |
| Powell v. Apollo Candle Co. .. .. .                            | 10 App. Cas. 282, 54 L. J. P. C. 7 ..                                                           | 78                |
| —— v. Chester. Chester v. Powell ..                            | 52 L. T. 722, W. N. 1885, 67 ..                                                                 | 211               |
| —— v. Cobb .. .. .                                             | 29 Ch. D. 486, 54 L. J. Ch. 475,<br>962, 52 L. T. 183, 53 L. T. 188 ..                          | 358               |
| Powers, Re. Lindsell v. Phillips .. ..                         | 30 Ch. D. 291 .. .. .                                                                           | 230               |
| Practice, (chambers, summons, adjournment)                     | W. N. (1884) 218 .. .. .                                                                        | 315               |
| Pratt v. Nene Outfall Commissioners ..                         | W. N. 1884, 215 .. .. .                                                                         | 272               |

| Name of Case.                                                  | Reference to Reports.                                                                                          | Column of Digest. |
|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------|
| Prentice v. Tabor (or T. v. P.) .. ..                          | 52 L. T. 85, 32 W. R. 872 ..                                                                                   | 526               |
| Preston v. Luck .. ..                                          | 27 Ch. D. 497, 33 W. R. 317 ..                                                                                 | 109               |
| — (or Paxton) v. Macreight. Re Macreight .. ..                 | 30 Ch. D. 165, 55 L. J. Ch. 28, 53 }<br>L. T. 146, 33 W. R. 838 .. }                                           | 135               |
| Prévost v. Compagnie de Fives-Lille .. ..                      | 10 App. Cas. 643, 54 L. J. P. C. 34                                                                            | 77                |
| Price, Re. Stafford v. Stafford (or Price v. Stafford) .. ..   | 28 Ch. D. 709, 54 L. J. Ch. 509, 52 }<br>L. T. 430, 33 W. R. 520 .. }                                          | 181               |
| Price's Patent Candle Co., Re .. ..                            | 27 Ch. D. 681, 54 L. J. Ch. 210, 51 }<br>L. T. 653 .. .. }                                                     | 463               |
| Priestman v. Thomas .. ..                                      | 9 P. D. 210, 53 L. J. P. 109, 51 }<br>L. T. 843, 32 W. R. 842 .. }                                             | 143, 342          |
| "Princess," The .. ..                                          | 52 L. T. 932 .. ..                                                                                             | 427               |
| Pritchard (or Prichard) v. Pritchard .. ..                     | 14 Q. B. D. 55, 54 L. J. Q. B. 30, }<br>51 L. T. 859, 33 W. R. 198 .. }                                        | 344               |
| Proskauer v. Siebe .. ..                                       | W. N. 1885, 159 .. ..                                                                                          | 353               |
| Prynne, Re .. ..                                               | 53 L. T. 465, W. N. 1885, 144 ..                                                                               | 317               |
| Pughe-Jones v. Blake. Re Blake .. ..                           | 29 Ch. D. 913, 54 L. J. Ch. 880, }<br>53 L. T. 302, 33 W. R. 886 .. }                                          | 315, 478          |
| Pye v. Pye .. ..                                               | W. N. 1885, 174 .. ..                                                                                          | 335               |
| Q.                                                             |                                                                                                                |                   |
| Queade's Trusts, Re .. ..                                      | 54 L. J. Ch. 786, 53 L. T. 74, 33 }<br>W. R. 816, W. N. 1884, 225, }                                           | 409               |
| Quirk v. Quirk. Re Gibson .. ..                                | W. N. 1885, 99 .. ..                                                                                           | 153               |
| R.                                                             |                                                                                                                |                   |
| Rackstraw's Trusts, Re .. ..                                   | 52 L. T. 612, 33 W. R. 559, W. N. }<br>1885, 73 .. .. }                                                        | 481               |
| Railway Sleepers Supply Co., Re .. ..                          | 29 Ch. D. 204, 54 L. J. Ch. 720, 52 }<br>L. T. 731, 33 W. R. 595 .. }                                          | 88                |
| "Rainbow," The .. ..                                           | 53 L. T. 91 .. ..                                                                                              | 434               |
| "Raisby," The .. ..                                            | 10 P. D. 114, 54 L. J. P. 65, 53 }<br>L. T. 56, 33 W. R. 938 .. }                                              | 436               |
| Rankart, Ex parte. Re Blakeway & Thomas                        | 52 L. T. 630, W. N. 1885, 64 ..                                                                                | 455               |
| Raphael & Sons v. Burt & Co. .. ..                             | 1 C. & E. 325 .. ..                                                                                            | 393               |
| Rawstone (or Rawstorne) v. Preston (Mayor) }                   | 30 Ch. D. 116, 54 L. J. Ch. 1102, }<br>52 L. T. 922, 33 W. R. 795 .. }                                         | 327               |
| "Regalia," The .. ..                                           | 51 L. T. 904, 5 Asp. M. C. 338 ..                                                                              | 304               |
| Regent's Canal City and Docks Co. v. London School Board .. .. | W. N. 1885, 4 .. ..                                                                                            | 224               |
| Reg. v. Barrett .. ..                                          | 15 Cox C. C. 658 .. ..                                                                                         | 122               |
| — v. Bermondsey (St. Mary's) Overseers .. }                    | 14 Q. B. D. 351, 54 L. J. M. C. 68, }<br>33 W. R. 414, 49 J. P. 38 .. }                                        | 295               |
| — v. Biron .. ..                                               | 14 Q. B. D. 474, 54 L. J. M. C. 77, }<br>51 L. T. 429, 49 J. P. 68 .. }                                        | 204               |
| — v. Bishop .. ..                                              | 14 Q. B. D. 584, 54 L. J. M. C. 78, }<br>49 J. P. 213 .. .. }                                                  | 193               |
| — v. Butt .. ..                                                | 51 L. T. 607, 49 J. P. 233, 15 Cox }<br>C. C. 564 .. .. }                                                      | 125               |
| — v. Charnwood Forest Ry. Co. .. ..                            | 1 C. & E. 419 .. ..                                                                                            | 235               |
| — v. Chittenden .. ..                                          | 49 J. P. 503 .. ..                                                                                             | 174               |
| — v. City of London Court (Judge) .. }                         | 14 Q. B. D. 818, 905, 54 L. J. Q. B. }<br>301, 330, 52 L. T. 537, 33 W. R. }<br>521, 700, 49 J. P. 407 .. .. } | 243               |

| Name of Case.                                                                    | Reference to Reports.                                                                                                        | Column of Digest. |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Reg. v. Clark (Joseph) .. .. .                                                   | 14 Q. B. D. 92, 54 L. J. M. C. 66,<br>52 L. T. 136, 33 W. R. 226, 49<br>J. P. 246, 15 Cox C. C. 666 ..                       | 482               |
| — v. Commissioners of Sewers for Essex ..                                        | 14 Q. B. D. 561, 54 L. J. M. C. 89,<br>51 L. T. 227, 52 L. T. 587, 33<br>W. R. 650, 48 J. P. 789, 49 J. P.<br>404 ..         | 419               |
| — v. Copping Syke Overseers .. .. .                                              | 14 Q. B. D. 83, 54 L. J. Q. B. 124,<br>52 L. T. 253, 49 J. P. 54 ..                                                          | 295               |
| — v. Cox & Railton .. .. .                                                       | 14 Q. B. D. 153, 54 L. J. M. C. 41,<br>52 L. T. 25, 33 W. R. 396, 49<br>J. P. 374, 15 Cox C. C. 611 ..                       | 148               |
| — v. Dee .. .. .                                                                 | 14 L. R. Ir. 468, 15 Cox C. C. 579<br>15 Q. B. D. 451, 54 L. J. M. C. 142,<br>53 L. T. 388, 33 W. R. 784, 49<br>J. P. 788 .. | 127               |
| — v. Denbighshire JJ. .. .. .                                                    | 14 Q. B. D. 325, 15 Q. B. D. 382,<br>54 L. J. Q. B. 557, 52 L. T. 436,<br>49 J. P. 279; 50 J. P. 5 ..                        | 292               |
| — v. Doutre .. .. .                                                              | 9 App. Cas. 745, 53 L. J. P. C. 85,<br>51 L. T. 669 ..                                                                       | 76                |
| — v. Dudley and Stephens .. .. .                                                 | 14 Q. B. D. 273, 560, 54 L. J. M. C.<br>32, 52 L. T. 107, 33 W. R. 347,<br>49 J. P. 69, 15 Cox C. C. 624 ..                  | 126               |
| — v. Edwards and Eastern and Midland<br>Ry. Co. .. .. .                          | 13 Q. B. D. 586, 53 L. J. M. C. 149,<br>51 L. T. 586, 49 J. P. 117 ..                                                        | 218               |
| — v. Essex .. .. .                                                               | 14 Q. B. D. 753, 54 L. J. Q. B. 459,<br>52 L. T. 926, 33 W. R. 214, 49<br>J. P. 87 ..                                        | 218               |
| — v. Flavell (and anor.), Leamington JJ. .                                       | 14 Q. B. D. 364, 52 L. T. 133, 33<br>W. R. 343, 49 J. P. 406, 15 Cox<br>C. C. 660 ..                                         | 47                |
| — v. Fobbing Level Commissioners ..                                              | 14 Q. B. D. 561, 54 L. J. M. C. 89,<br>51 L. T. 227, 52 L. T. 587, 33 W.<br>R. 650, 48 J. P. 789, 49 J. P. 404               | 419               |
| — v. Gavin .. .. .                                                               | 15 Cox C. C. 656 ..                                                                                                          | 123               |
| — v. Gilham .. .. .                                                              | 52 L. T. 326, 49 J. P. 357, 15 Cox<br>C. C. 719 ..                                                                           | 501               |
| — v. Greenwich County Court Registrar ..                                         | 15 Q. B. D. 54, 54 L. J. Q. B. 392,<br>33 W. R. 671 ..                                                                       | 32                |
| — or Edmonton Guardians v. Islington (St.<br>Mary's) Guardians. Re Davis .. .. . | 15 Q. B. D. 95, 339, 54 L. J. M. C.<br>110, 146, 53 L. T. 327, 49 J. P.<br>804 ..                                            | 293               |
| — v. Jones .. .. .                                                               | 49 J. P. 728 ..                                                                                                              | 123               |
| — v. Langrville Overseers .. .. .                                                | 14 Q. B. D. 83, 54 L. J. Q. B. 124,<br>52 L. T. 253, 49 J. P. 54 ..                                                          | 295               |
| — v. Local Government Board .. .. .                                              | 15 Q. B. D. 70, 54 L. J. M. C. 104,<br>53 L. T. 194, 49 J. P. 580 ..                                                         | 173               |
| — v. McDonald .. .. .                                                            | 15 Q. B. D. 323, 52 L. T. 583, 33<br>W. R. 735, 49 J. P. 695 ..                                                              | 125               |
| — v. Merthyr Tydvil, JJ. .. .. .                                                 | 14 Q. B. D. 584, 54 L. J. M. C. 78,<br>49 J. P. 213 ..                                                                       | 193               |
| — v. Millhouse .. .. .                                                           | 15 Cox C. C. 622 ..                                                                                                          | 126               |
| — v. Montagu .. .. .                                                             | 49 J. P. 55 ..                                                                                                               | 193               |
| — v. Phillimore & Pilling .. .. .                                                | 14 Q. B. D. 474, n., 51 L. T. 205,<br>32 W. R. 593, 48 J. P. 774 ..                                                          | 204               |
| — v. Pirehill, N., or Staffordshire, JJ. ..                                      | 14 Q. B. D. 13, 54 L. J. M. C. 17,<br>51 L. T. 534, 33 W. R. 205, 49<br>J. P. 36 ..                                          | 343               |

| Name of Case.                                                                    | Reference to Reports.                                                                                   | Column of Digest. |
|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|-------------------|
| Reg. v. Firehill, N., or Staffordshire, JJ. (No. 2)                              | 49 J. P. 453 .. ..                                                                                      | 204               |
| — v. Powell .. ..                                                                | 54 L. J. M. C. 26, 51 L. T. 713, 49 J. P. 183, 15 Cox C. C. 568 ..                                      | 124               |
| — v. Rawlins .. ..                                                               | 14 Q. B. D. 325, 15 Q. B. D. 382, 54 L. J. Q. B. 557, 52 L. T. 436, 49 J. P. 279, 50 J. P. 5 ..         | 292               |
| — v. Rose .. ..                                                                  | 15 Cox C. C. 540 .. ..                                                                                  | 126               |
| — v. Sampson .. ..                                                               | 52 L. T. 772, 49 J. P. 807 ..                                                                           | 124               |
| — v. Sibley (or Sibly) .. ..                                                     | 14 Q. B. D. 358, 54 L. J. M. C. 23, 52 L. T. 116, 33 W. R. 248, 49 J. P. 294 ..                         | 292               |
| — v. South Staffordshire Waterworks Co.                                          | 49 J. P. 645, 50 J. P. 20 .. ..                                                                         | 296               |
| — v. Stanbury Eardley .. ..                                                      | 49 J. P. 551 .. ..                                                                                      | 236               |
| — v. Stephenson .. ..                                                            | 13 Q. B. D. 331, 53 L. J. M. C. 176, 52 L. T. 267, 33 W. R. 44, 49 J. P. 486, 15 Cox C. C. 679 ..       | 123               |
| — or Merthyr Tydvil Guardians v. Stepney Guardians .. ..                         | 54 L. J. M. C. 12, 52 L. T. 959, 49 J. P. 164, W. N. 1884, 135 ..                                       | 292               |
| — v. Surrey (or Croydon) County Court Judge .. ..                                | 13 Q. B. D. 963, 53 L. J. Q. B. 545, 51 L. T. 102, 33 W. R. 68 ..                                       | 117               |
| — v. Wellard .. ..                                                               | 14 Q. B. D. 63, 54 L. J. M. C. 14, 51 L. T. 604, 33 W. R. 156, 49 J. P. 296, 15 Cox C. C. 559 ..        | 125               |
| — v. West Bromwich School Board ..                                               | 13 Q. B. D. 929, 53 L. J. M. C. 153, 52 L. T. 164, 32 W. R. 866, 48 J. P. 808 ..                        | 294               |
| — v. White .. ..                                                                 | 14 Q. B. D. 358, 54 L. J. M. C. 23, 52 L. T. 116, 33 W. R. 248, 49 J. P. 294 ..                         | 292               |
| — v. Whitfield (and Thorne) .. ..                                                | 15 Q. B. D. 122, 54 L. J. M. C. 113, 53 L. T. 196, 49 J. P. 230, 820 ..                                 | 233               |
| — v. Wigan (Mayor) .. ..                                                         | 14 Q. B. D. 908, 54 L. J. Q. B. 338, 52 L. T. 435, 33 W. R. 547, 49 J. P. 372 ..                        | 269               |
| Reid, Ex parte .. ..                                                             | 49 J. P. 600 .. ..                                                                                      | 204               |
| — Ex parte Morrison. Re Gillespie .. ..                                          | 14 Q. B. D. 963, 54 L. J. Q. B. 342, 52 L. T. 692, 33 W. R. 707 ..                                      | 27, 33            |
| Revell, Ex parte. Re Tollemache (No. 1) (see Ex parte Edwards. Re Tollemache) .. | 13 Q. B. D. 720, 54 L. J. Q. B. 89, 51 L. T. 376, 33 W. R. 288 ..                                       | 37                |
| (No. 2) .. ..                                                                    | 13 Q. B. D. 727, 54 L. J. Q. B. 92, 51 L. T. 379, 33 W. R. 289 ..                                       | 39                |
| Reynolds, Ex parte. Re Barnett .. ..                                             | 15 Q. B. D. 169, 54 L. J. Q. B. 354, 53 L. T. 448, 33 W. R. 715 ..                                      | 24, 32            |
| Rhoades, Re. Lane v. Rhodes .. ..                                                | 29 Ch. D. 142, 54 L. J. Ch. 573, 53 L. T. 15, 33 W. R. 603 ..                                           | 525               |
| Rhodes, Re. Ex parte Heyworth .. ..                                              | 14 Q. B. D. 49, 54 L. J. Q. B. 198, 52 L. T. 201 .. ..                                                  | 35                |
| — v. Jenkins (or Jenkin). Re Mansel ..                                           | 54 L. J. Ch. 883, 52 L. T. 806, 33 W. R. 727, W. N. 1885, 112 ..                                        | 474               |
| — v. Sugden. Re Wadsworth .. ..                                                  | 29 Ch. D. 517, 54 L. J. Ch. 638, 52 L. T. 613, 33 W. R. 558 ..                                          | 448               |
| “Rhosina,” The .. ..                                                             | 10 P. D. 24, 131, 54 L. J. P. 42, 72, 52 L. T. 140, 53 L. T. 30, 33 W. R. 599, 794, 5 Asp. M. C. 350 .. | 433               |
| Richards, Ex parte. Re Wallace .. ..                                             | 14 Q. B. D. 22, 54 L. J. Q. B. 293, 51 L. T. 551, 33 W. R. 66 ..                                        | 36                |
| — v. W. Middlesex Waterworks Co. ..                                              | 15 Q. B. D. 660, 54 L. J. Q. B. 551, 33 W. R. 902, 49 J. P. 631 ..                                      | 240, 501          |
| Richardson, Re. Shillito v. Hobson ..                                            | 30 Ch. D. 396 .. ..                                                                                     | 170               |

| Name of Case.                                                      | Reference to Reports.                                                                              | Column of Digest. |
|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-------------------|
| Richardson v. Brown .. .. .                                        | 49 J. P. 661 .. .. .                                                                               | 232               |
| — v. English Crown Spelter Co. ..                                  | W. N. 1885, 31 .. .. .                                                                             | 87                |
| — v. Pratt .. .. .                                                 | 52 L. T. 614 .. .. .                                                                               | 21                |
| Riddell v. Errington .. .. .                                       | 26 Ch. D. 220, 54 L. J. Ch. 293, 50 L. T. 584, 32 W. R. 680 ..                                     | 401               |
| Riddeough, Re. Ex parte Vaughan ..                                 | 14 Q. B. D. 25, 33 W. R. 151 ..                                                                    | 122               |
| Ridgway, Ex parte. Re Ridgway ..                                   | 15 Q. B. D. 447, 54 L. J. Q. B. 570, 34 W. R. 80 ..                                                | 170               |
| Ridgway v. Ward .. .. .                                            | 14 Q. B. D. 110, 54 L. J. M. C. 20, 51 L. T. 704, 33 W. R. 166, 49 J. P. 150, 15 Cox, C. C. 603 .. | 58                |
| Riel v. The Queen .. .. .                                          | 10 App. Cas. 675 .. .. .                                                                           | 76                |
| "Ripon," The .. .. .                                               | 10 P. D. 65, 54 L. J. P. 56, 52 L. T. 438, 33 W. R. 659, 5 Asp. M. C. 365 ..                       | 429               |
| River Plate Fresh Meat Co., Re ..                                  | 52 L. T. 39, 33 W. R. 319, W. N. 1885, 14 ..                                                       | 93                |
| Rivett Carnac's Will, Re .. .. .                                   | 30 Ch. D. 136, 54 L. J. Ch. 1074, 53 L. T. 81, 33 W. R. 837 ..                                     | 408               |
| Riviere's Trade-mark, Re .. .. .                                   | 53 L. T. 237 .. .. .                                                                               | 468               |
| "Robert Dickenson," or "Dickinson," The ..                         | 10 P. D. 15, 54 L. J. P. 5, 52 L. T. 55, 33 W. R. 400, 5 Asp. M. C. 341 ..                         | 307               |
| Roberts, Re. Tarleton v. Bruton ..                                 | 30 Ch. D. 234, 53 L. J. Ch. 1023, 51 L. T. 654, 53 L. T. 432, 32 W. R. 986 ..                      | 514               |
| Roberts v. Barnard .. .. .                                         | 1 C. & E. 336. .. .. .                                                                             | 129               |
| Roberts' Case. Re Carriage Co-operative Supply Association .. .. . | 27 Ch. D. 322, 53 L. J. Ch. 1154, 51 L. T. 286, 33 W. R. 411 ..                                    | 85                |
| Robertson v. Richardson .. .. .                                    | 30 Ch. D. 623, 33 W. R. 897 ..                                                                     | 415               |
| Robinson, Re .. .. .                                               | 27 Ch. D. 160, 53 L. J. Ch. 986, 51 L. T. 737, 33 W. R. 17 ..                                      | 331               |
| — Pindar v. Robinson .. .. .                                       | W. N. 1885, 147 .. .. .                                                                            | 321               |
| Robinson v. Needham. Re Needham ..                                 | 54 L. J. Ch. 75 .. .. .                                                                            | 504               |
| — v. Tucker .. .. .                                                | 14 Q. B. D. 371, 53 L. J. Q. B. 317, 50 L. T. 380, 32 W. R. 697 ..                                 | 338               |
| "Robinsons," The, and The "Satellite ..                            | 51 L. T. 905, 5 Asp. M. C. 338 ..                                                                  | 306               |
| Roe v. Birch, Re Birch .. .. .                                     | 27 Ch. D. 622, 54 L. J. Ch. 119, 51 L. T. 777, 33 W. R. 72 ..                                      | 160               |
| Rogers, Ex parte. Re Rogers .. ..                                  | 13 Q. B. D. 438, 33 W. R. 354 ..                                                                   | 25                |
| Rosher, Re. Rosher v. Rosher .. ..                                 | 26 Ch. D. 801, 53 L. J. Ch. 722, 51 L. T. 785, 32 W. R. 821 ..                                     | 505               |
| Rosing's Application, Re .. .. .                                   | 54 L. J. Ch. 975, n. .. .. .                                                                       | 464               |
| Roskrow, Ex parte .. .. .                                          | W. N. 1885, 3 .. .. .                                                                              | 270               |
| Rous v. Jackson .. .. .                                            | 29 Ch. D. 521, 54 L. J. Ch. 732, 52 L. T. 733, 33 W. R. 773 ..                                     | 301               |
| Routh, Ex parte. Re Whitehead .. ..                                | 14 Q. B. D. 419, 54 L. J. Q. B. 88, 240, 52 L. T. 265, 597, 33 W. R. 230, 471, 49 J. P. 405 ..     | 185               |
| Rowe (Ethel), Re (or Brown) .. ..                                  | 13 Q. B. D. 614, 51 L. T. 793, 33 W. R. 79 ..                                                      | 188               |
| Rowland (or Rowlands) v. Williams ..                               | 53 L. T. 135, W. N. 1885, 169, 194 ..                                                              | 449               |
| Rownson (or Rowson), Re. Field v. White ..                         | 29 Ch. D. 358, 54 L. J. Ch. 950, 52 L. T. 825, 33 W. R. 604, 49 J. P. 759 ..                       | 157               |
| Rudland v. Sunderland (Mayor) .. ..                                | 52 L. T. 617, 33 W. R. 164, 49 J. P. 359 ..                                                        | 371               |
| Rusbrooke (or Rushbrooke) v. Farley ..                             | 54 L. J. Ch. 1079, 52 L. T. 572, 33 W. R. 557 ..                                                   | 339               |



| Name of Case.                                             | Reference to Reports.                                                        | Column of Digest. |
|-----------------------------------------------------------|------------------------------------------------------------------------------|-------------------|
| Russell, Re. Russell v. Shoolbred .. ..                   | 29 Ch. D. 254, 53 L. T. 365 ..                                               | 210               |
| —, Son, & Scott and Wallis, Re .. ..                      | 30 Ch. D. 114, 54 L. J. Ch. 948, 52 L. T. 794, 33 W. R. 815 ..               | 439               |
| Russell's Trusts, Re .. ..                                | 53 L. J. Ch. 400, 52 L. T. 559, W. N. 1885, 21 ..                            | 512               |
| Russell v Watts .. ..                                     | 10 App. Cas. 590, 50 L. T. 673, 32 W. R. 621 ..                              | 137               |
| Ryley, Re. Ex parte Stewart (Official Receiver) .. ..     | 15 Q. B. D. 329, 54 L. J. Q. B. 420, 33 W. R. 666 ..                         | 40                |
| S.                                                        |                                                                              |                   |
| St. John's (Hampstead) Vestry v. Cotton ..                | 49 J. P. 567, W. N. 1885, 221 ..                                             | 247               |
| — v. Hoopel .. ..                                         | 15 Q. B. D. 652, 54 L. J. M. C. 147, 33 W. R. 903, 49 J. P. 741 ..           | 249               |
| St. Leonard's, Shoreditch, Parochial Schools, Re .. ..    | 10 App. Cas. 304, 54 L. J. P. C. 30, 51 L. T. 305, 33 W. R. 756 ..           | 394               |
| Salaman, Ex parte. Re Salaman .. ..                       | 14 Q. B. D. 936, 54 L. J. Q. B. 238, 52 L. T. 378 ..                         | 28                |
| Salisbury (Bishop of) v. Otteley .. ..                    | 10 P. D. 20 ..                                                               | 334               |
| Salkeld, Re. Ex parte Good .. ..                          | 13 Q. B. D. 731, 54 L. J. Q. B. 96, 51 L. T. 876, 33 W. R. 22 ..             | 29                |
| Salt v. Pym. Re Northen's Estate .. ..                    | 28 Ch. D. 153, 54 L. J. Ch. 273, 52 L. T. 173, 33 W. R. 336 ..               | 514               |
| Salter v. Att.-Gen. Re Morris .. ..                       | 52 L. T. 840, 33 W. R. 895, W. N. 1885, 89 ..                                | 513               |
| Sandars (or Sanders), Re. Ex parte Serjeant ..            | 54 L. J. Q. B. 331, 52 L. T. 516, 49 J. P. 582 ..                            | 116, 207          |
| Sandeman v. Scottish Property Building Society .. ..      | 10 App. Cas. 553 ..                                                          | 399               |
| Sanders v. Davis .. ..                                    | 15 Q. B. D. 218, 54 L. J. Q. B. 576, 33 W. R. 655 ..                         | 259               |
| — (or Saunders) v. McConnell. Re McConnell .. ..          | 29 Ch. D. 76, 52 L. T. 80, 33 W. R. 359 ..                                   | 310               |
| Sandgate Local Board v. Pledge .. ..                      | 14 Q. B. D. 730, 52 L. T. 546, 33 W. R. 565, 49 J. P. 342 ..                 | 203               |
| Sandwell, Re. Ex parte Zerfass .. ..                      | 14 Q. B. D. 960, 54 L. J. Q. B. 323, 52 L. T. 692, 33 W. R. 522 ..           | 30                |
| Sangster v. Cochrane .. ..                                | 28 Ch. D. 298, 54 L. J. Ch. 301, 51 L. T. 889, 33 W. R. 221, 49 J. P. 327 .. | 64                |
| Saunders v. Brading Harbour Improvement Co. .. ..         | 52 L. T. 426, W. N. 1885, 36 ..                                              | 453               |
| — v. Dense (or Dence) - .. ..                             | 52 L. T. 644, W. N. 1885, 73 ..                                              | 365               |
| — v. Pawley .. ..                                         | 14 Q. B. D. 234, 54 L. J. Q. B. 199, 51 L. T. 903, 33 W. R. 277 ..           | 359               |
| — v. Kent .. ..                                           | W. N. 1885, 147 ..                                                           | 255               |
| Savage v. Payne. Re Earl of Stamford and Warrington .. .. | 53 L. T. 511, 33 W. R. 909, W. N. 1885, 154, 173 ..                          | 348               |
| Sawyer v. Sawyer .. ..                                    | 28 Ch. D. 595, 54 L. J. Ch. 444, 52 L. T. 292, 33 W. R. 403 ..               | 476               |
| Sayers v. Collyer .. ..                                   | 28 Ch. D. 103, 54 L. J. Ch. 1, 51 L. T. 723, 33 W. R. 91, 49 J. P. 244 ..    | 120               |
| Saywood v. Cross .. ..                                    | 14 Q. B. D. 53, 54 L. J. Q. B. 17, 51 L. T. 601, 33 W. R. 135 ..             | 318               |
| Scaramanga v. Marquand & Co. .. ..                        | 52 L. T. 764 ..                                                              | 426               |

| Name of Case.                                                                 | Reference to Reports.                                                                              | Column of Digest. |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-------------------|
| Schofield <i>v.</i> Solomon .. .. .                                           | 54 L. J. Ch. 1101, 52 L. T. 679, W. N. 1885, 104 ..                                                | 231               |
| Schreiber <i>v.</i> Dinkel .. .. .                                            | 54 L. J. Ch. 241, 52 L. T. 130, W. N. 1884, 236 ..                                                 | 496               |
| Scotney <i>v.</i> Lomer .. .. .                                               | 29 Ch. D. 535, 54 L. J. Ch. 558, 52 L. T. 747, 33 W. R. 633 ..                                     | 297, 502          |
| Scott, Re .. .. .                                                             | 27 Ch. D. 116, 54 L. J. Ch. 194, 51 L. T. 735, 32 W. R. 801 ..                                     | 234               |
| —— <i>v.</i> Brown (Matthew) & Co. ..                                         | 51 L. T. 746, W. N. 1884, 209 ..                                                                   | 216               |
| —— <i>v.</i> Great & Little Clifton Sch. Bd. ..                               | 14 Q. B. D. 500, 52 L. T. 105, 33 W. R. 368, 1 C. & E. 435 ..                                      | 142               |
| —— <i>v.</i> Pape .. .. .                                                     | 54 L. J. Ch. 914, 53 L. T. 598 ..                                                                  | 226               |
| Sebright <i>v.</i> Thornton .. .. .                                           | W. N. 1885, 176 ..                                                                                 | 407               |
| Secretary of State for War and Denne, Re ..                                   | 54 L. J. Ch. 45, 51 L. T. 657, 33 W. R. 120, W. N. 1884, 206 ..                                    | 441               |
| Sedgwick <i>v.</i> Neville .. .. .                                            | 55 L. J. Q. B. 18, 34 W. R. 75, W. N. 1885, 197 ..                                                 | 281               |
| Sellors <i>v.</i> Matlock Bath Local Bd. ..                                   | 14 Q. B. D. 928, 52 L. T. 762 ..                                                                   | 372               |
| Selous <i>v.</i> Croydon Local Board ..                                       | 53 L. T. 209, W. N. 1885, 105 ..                                                                   | 355               |
| Senhouse <i>v.</i> Mawson .. .. .                                             | 52 L. T. 745, W. N. 1885, 119 ..                                                                   | 22                |
| "Seraglio." The .. .. .                                                       | 10 P. D. 120, 54 L. J. P. 76, 52 L. T. 865, 34 W. R. 32 ..                                         | 308               |
| Sergeant, Re. Mertens <i>v.</i> Walley ..                                     | 26 Ch. D. 575, 54 L. J. Ch. 159, 32 W. R. 987 ..                                                   | 520               |
| Serjeant, Ex parte. Re Sandars (or Sanders) ..                                | 54 L. J. Q. B. 331, 52 L. T. 516, 49 J. P. 582 ..                                                  | 116, 207          |
| Serrao <i>v.</i> Noel .. .. .                                                 | 15 Q. B. D. 549 ..                                                                                 | 145               |
| Seward <i>v.</i> "Vera Cruz" (owners) ..                                      | 10 App. Cas. 59, 54 L. J. P. 9, 52 L. T. 474, 33 W. R. 477, 49 J. P. 324, 5 Asp. M. C. 270, 386 .. | 202               |
| Sewell <i>v.</i> Burdick .. .. .                                              | 10 App. Cas. 74, 54 L. J. Q. B. 156, 52 L. T. 445, 33 W. R. 461, 5 Asp. M. C. 298, 376 ..          | 423               |
| Seymour <i>v.</i> Bridge .. .. .                                              | 14 Q. B. D. 460, 54 L. J. Q. B. 347 ..                                                             | 455               |
| Shafto's Trusts, Re .. .. .                                                   | 29 Ch. D. 247, 54 L. J. Ch. 885, 53 L. T. 261, 33 W. R. 728 ..                                     | 473               |
| Shakespeare (or Shakspear), Re. Deakin <i>v.</i> Lakin ..                     | 30 Ch. D. 169, 55 L. J. Ch. 44, 53 L. T. 145, 33 W. R. 744 ..                                      | 179               |
| Shaw and Birmingham (Mayor), Re ..                                            | 27 Ch. D. 614, 54 L. J. Ch. 51, 51 L. T. 684, 33 W. R. 74 ..                                       | 16                |
| Shead, Ex parte. Re Mundy .. .. .                                             | 15 Q. B. D. 338 ..                                                                                 | 23                |
| Sheffield and S. Yorks. Permanent Building Society <i>v.</i> Harrison .. .. . | 15 Q. B. D. 358, 54 L. J. Q. B. 15, 51 L. T. 649, 33 W. R. 144 ..                                  | 164               |
| Shepherd <i>v.</i> Folland .. .. .                                            | 49 J. P. 165 ..                                                                                    | 203, 238          |
| —— <i>v.</i> Norwich (Mayor) .. .. .                                          | 30 Ch. D. 553, 54 L. J. Ch. 1050, 53 L. T. 251, 33 W. R. 841 ..                                    | 224               |
| Sherrington's Case. Re Southport and West Lancashire Banking Co. .. .. .      | 34 W. R. 49, W. N. 1885, 188 ..                                                                    | 80                |
| Shield, Re. Pethybridge <i>v.</i> Burrow ..                                   | 53 L. T. 5, W. N. 1885, 83 ..                                                                      | 170               |
| Shillito <i>v.</i> Hobson. Re Richardson ..                                   | 30 Ch. D. 396 ..                                                                                   | 170               |
| Shoolbred, Ex parte. Re Angell ..                                             | 14 Q. B. D. 298, 54 L. J. Q. B. 87, 51 L. T. 678, 33 W. R. 202 ..                                  | 27                |
| Sibeth, Ex parte. Re Suse & Sibeth ..                                         | 14 Q. B. D. 417, 54 L. J. Q. B. 322, 33 W. R. 556 ..                                               | 35                |
| Sibley <i>v.</i> Higgs .. .. .                                                | 15 Q. B. D. 619, 54 L. J. Q. B. 525, 33 W. R. 748 ..                                               | 54                |
| Siddall, Re .. .. .                                                           | 29 Ch. D. 1, 54 L. J. Ch. 682, 52 L. T. 114, 33 W. R. 509 ..                                       | 98                |

| Name of Case.                                         | Reference to Reports.                                                                          | Column of Digest. |
|-------------------------------------------------------|------------------------------------------------------------------------------------------------|-------------------|
| Simmons (Walter), Re .. .. .                          | 15 Q. B. D. 348, 53 L. T. 147, 33 W. R. 706, 49 J. P. 740 ..                                   | 451               |
| Sinclair, Re. Ex parte Payne .. ..                    | 15 Q. B. D. 616 .. ..                                                                          | 43                |
| Skinner v. City of London Marine Ins. Corpn. {        | 14 Q. B. D. 882, 54 L. J. Q. B. 437, 53 L. T. 191, 33 W. R. 628 ..                             | 128               |
| Slazenger v. Malings .. .. .                          | W. N. 1885, 124 .. ..                                                                          | 463               |
| Sly v. Blake. Re Johnson .. .. .                      | 29 Ch. D. 964, 52 L. T. 682, 33 W. R. 502 .. ..                                                | 228               |
| Small v. Smith .. .. .                                | 10 App. Cas. 119 .. ..                                                                         | 395               |
| Smallpage's & Brandon's Cases. Re Marseilles {        | 30 Ch. D. 598 .. ..                                                                            | 48, 100           |
| Extension Ry. and Land Co. .. ..                      | 30 Ch. D. 490, 52 L. T. 567, 33 W. R. 496 .. ..                                                | 472               |
| Smethurst v. Hastings .. .. .                         | 10 App. Cas. 249, 53 L. J. Ch. 891, 55 L. J. Ch. 12, 53 L. T. 330, 33 W. R. 60, 753 .. ..      | 287               |
| Smith & Hancock v. Cropper .. ..                      | 29 Ch. D. 1009, n., 48 L. T. 512, 31 W. R. 411 .. ..                                           | 112               |
| Smith & Stott, Re .. .. .                             | 14 Q. B. D. 394, 54 L. J. Q. B. 422, 53 L. T. 230, 49 J. P. 789 ..                             | 39, 227           |
| Smith, Ex parte. Re Hepburn .. ..                     | 14 Q. B. D. 873, 54 L. J. Q. B. 366, 33 W. R. 920 .. ..                                        | 209               |
| v. Acock .. .. .                                      | 14 Q. B. D. 105, 54 L. J. Q. B. 121, 52 L. T. 218, 33 W. R. 455, 5 Asp. M. C. 360 .. ..        | 420               |
| v. Critchfield .. .. .                                | 28 Ch. D. 650, 54 L. J. Ch. 278, 52 L. T. 19, 33 W. R. 211 ..                                  | 426               |
| v. Dart .. .. .                                       | W. N. 1885, 61 .. ..                                                                           | 257               |
| v. Davies .. .. .                                     | 28 Ch. D. 7, 51 L. T. 718, 49 J. P. 182, 54 L. J. Ch. 1071, 53 L. T. 34, W. N. 1885, 135 .. .. | 502               |
| v. Harris. Re Bush .. .. .                            | 25 Ch. D. 462, 54 L. J. Ch. 251, 50 L. T. 357, 32 W. R. 886 ..                                 | 488               |
| v. Land and House Property Corpn. {                   | 27 Ch. D. 606, 54 L. J. Ch. 201, 51 L. T. 681, 33 W. R. 275 ..                                 | 503               |
| v. Martin. Re Martin .. .. .                          | 53 L. T. 386, 34 W. R. 30, W. N. 1885, 178 .. ..                                               | 257               |
| v. Olding .. .. .                                     | 29 Ch. D. 85, 52 L. T. 335, 33 W. R. 449 .. ..                                                 | 139               |
| v. Spence. Re Wheatley .. .. .                        | 14 Q. B. D. 588, 54 L. J. M. C. 95, 52 L. T. 859, 33 W. R. 475, 49 J. P. 440 .. ..             | 318               |
| v. Wills .. .. .                                      | 29 Ch. D. 239, 54 L. J. Ch. 893, 53 L. T. 463, 33 W. R. 823 ..                                 | 312               |
| Snelling v. Pulling .. .. .                           | 14 Q. B. D. 424, 54 L. J. Q. B. 177, 52 L. T. 912, W. N. 1885, 222 ..                          | 169               |
| Snow v. Hill .. .. .                                  | 33 W. R. 131, W. N. 1884, 217 ..                                                               | 360               |
| Société Générale de Paris v. Dreyfus Bros. {          | 33 W. R. 750, W. N. 1885, 138 ..                                                               | 96                |
| v. Tramways Union {                                   | 10 P. D. 62, 54 L. J. P. 52, 52 L. T. 440, 33 W. R. 659, 5 Asp. M. C. 368 .. ..                | 447               |
| Co. .. .. .                                           | 10 P. D. 137, 54 L. J. P. 83 .. ..                                                             | 316               |
| Solicitor, A, Re .. .. .                              | 26 Ch. D. 236, 54 L. J. Ch. 256, 50 L. T. 262, 32 W. R. 701 ..                                 | 309               |
| Ex parte Dudley .. .. .                               | 34 W. R. 49, W. N. 1885, 188 ..                                                                | 146               |
| "Solis," The .. .. .                                  | 10 App. Cas. 229, 54 L. J. M. C. 81, 53 L. T. 157, 33 W. R. 661, 49 J. P. 420 .. ..            | 179               |
| "Solway," The .. .. .                                 |                                                                                                | 80                |
| Soutar's Policy Trust, Re .. .. .                     |                                                                                                | 250               |
| Southport and West Lancashire Banking Co., Re .. .. . |                                                                                                |                   |
| Spackman v. Plumstead Board of Works ..               |                                                                                                |                   |

| Name of Case.                                                      | Reference to Reports.                                    | Column of Digest. |
|--------------------------------------------------------------------|----------------------------------------------------------|-------------------|
| Spain <i>v.</i> Mowatt .. .. .                                     | 28 Ch. D. 402, 54 L. J. Ch. 567,                         | 487               |
| "Spearman," The .. .. .                                            | 33 W. R. 597 .. .. .                                     | 428               |
| Spencer Bell to L. & S. W. Ry. Co. and Metr. Dist. Ry. Co. .. .. . | 10 App. Cas. 276, 53 L. T. 29 ..                         | 220               |
| Spencer, Re. Thomas <i>v.</i> Spencer .. .. .                      | 33 W. R. 771 .. .. .                                     | 186               |
| Sproule <i>v.</i> Bouch. Re Bouch .. .. .                          | 30 Ch. D. 183, 55 L. J. Ch. 80, 34 W. R. 62 .. .. .      | 156               |
| Squire <i>v.</i> Arnison .. .. .                                   | 29 Ch. D. 635, 54 L. J. Ch. 665,                         | 153               |
| Stafford <i>v.</i> Stafford. Re Price .. .. .                      | 52 L. T. 366, 33 W. R. 621 ..                            | 181               |
| Stamford (Earl) and Warrington, Re. Savage <i>v.</i> Payne .. .. . | 48 J. P. 758, 1 C. & E. 365 ..                           | 348               |
| Standing <i>v.</i> Bowring .. .. .                                 | 28 Ch. D. 709, 54 L. J. Ch. 509,                         | 8                 |
| "Stanmore," The .. .. .                                            | 52 L. T. 430, 33 W. R. 520 ..                            | 430               |
| Stapley & Smith's Application. Re Trade-Mark "Alpine" .. .. .      | 53 L. T. 511, 33 W. R. 909, W. N. 1885, 154, 173 .. .. . | 463               |
| Starks <i>v.</i> Salter. Re Jones .. .. .                          | 27 Ch. D. 341, 54 L. J. Ch. 10                           | 512               |
| Steamship "Thanemore" <i>v.</i> Thompson .. .. .                   | 51 L. T. 591, 33 W. R. 79, W. N. 1885, 223 .. .. .       | 361               |
| Steel Company of Canada, Re .. .. .                                | 10 P. D. 134, 54 L. J. P. 89,                            | 101               |
| Stephenson <i>v.</i> Stephenson. Re Stephenson .. .. .             | 53 L. T. 10 .. .. .                                      | 527               |
| Stevens <i>v.</i> G. W. Ry. Co. .. .. .                            | 29 Ch. D. 877, 54 L. J. Ch. 727,                         | 381               |
| ——— <i>v.</i> Metropolitan District Ry. Co. .. .. .                | 53 L. T. 79, 33 W. R. 725 ..                             | 313, 379          |
| Stewart & Co. <i>v.</i> Merchants Marine Insurance Co. .. .. .     | W. N. 1885, 152 .. .. .                                  | 196               |
| Stewart, Ex parte. Re Ryley .. .. .                                | 52 L. T. 552, 5 Asp. M. C. 398 ..                        | 40                |
| Stone <i>v.</i> Att.-Gen. Re Sutton .. .. .                        | W. N. 1885, 79 .. .. .                                   | 515               |
| "Stormcock," The .. .. .                                           | 54 L. J. Ch. 928, 52 L. T. 876,                          | 428               |
| Street <i>v.</i> Union Bank of Spain and England .. .. .           | W. N. 1885, 62 .. .. .                                   | 470               |
| Stribling <i>v.</i> Halse .. .. .                                  | 52 L. T. 324, 49 J. P. 310 ..                            | 281               |
| Strickland <i>v.</i> Weldon .. .. .                                | 29 Ch. D. 60, 54 L. J. Ch. 737,                          | 71                |
| Stuart <i>v.</i> Wrey. Re Wrey .. .. .                             | 52 L. T. 832, 33 W. R. 531 ..                            | 520               |
| Studds <i>v.</i> Watson .. .. .                                    | 14 Q. B. D. 555, 54 L. J. Q. B. 387,                     | 167               |
| Sugg <i>v.</i> Bray .. .. .                                        | W. N. 1885, 211 .. .. .                                  | 336               |
| Sully, Ex parte. Re Wallis .. .. .                                 | 15 Q. B. D. 329, 54 L. J. Q. B. 420,                     | 43                |
| Suse & Sibeth, Re. Ex parte Sibeth .. .. .                         | 33 W. R. 656 .. .. .                                     | 35                |
| ———, Re. Ex parte Dever (or Devers (No. 1) .. .. .                 | 28 Ch. D. 464, 54 L. J. Ch. 613,                         | 50                |
| ——— (No. 2) .. .. .                                                | 33 W. R. 519 .. .. .                                     | 53                |
| Sutton, Re (a lunatic) .. .. .                                     | 53 L. T. 53 .. .. .                                      | 472               |
| ——— Stone <i>v.</i> Att.-Gen. .. .. .                              | 30 Ch. D. 156, 55 L. J. Ch. 31,                          | 515               |

| Name of Case.                                                       | Reference to Reports.                                                         | Column of Digest. |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------|-------------------|
| <i>Svendsen v. Wallace</i> .. .. .                                  | 10 App. Cas. 404, 54 L. J. Q. B. 497, 52 L. T. 901, 5 Asp. M. C. 232          | 194               |
| <i>Swinburn(e) v. Ainslie. Re Ainslie</i> ..                        | 28 Ch. D. 89, 30 Ch. D. 485, 54 L. J. Ch. 5, 33 W. R. 195, 910                | 417               |
| ———— <i>v. Milburn</i> .. .. .                                      | 9 App. Cas. 844, 54 L. J. Q. B. 6, 52 L. T. 222, 33 W. R. 325, 48 J. P. 548   | 212               |
| <i>Swinburne, Re. Swinburne v. Pitt</i> ..                          | 27 Ch. D. 696, 54 L. J. Ch. 229, 33 W. R. 394                                 | 300               |
| <i>Swindon, &amp;c., Ry. Act, Re. Charlton v. Rolleston</i> .. .. . | 28 Ch. D. 237, 54 L. J. Ch. 233, 51 L. T. 612                                 | 219               |
| <i>Swire, Re. Mellor v. Swire</i> .. .. .                           | 30 Ch. D. 239, 53 L. T. 205, 33 W. R. 785                                     | 340               |
| <i>Syer v. Gladstone</i> .. .. .                                    | 30 Ch. D. 614.                                                                | 524               |
| <i>Sykes v. Sacerdoti</i> .. .. .                                   | 15 Q. B. D. 423, 54 L. J. Q. B. 560, 53 L. T. 150, 418                        | 322               |
| <i>Symonds v. Incorporated Law Society</i> ..                       | 49 J. P. 212                                                                  | 452               |
| <i>Symons v. Leaker</i> .. .. .                                     | 15 Q. B. D. 629, 54 L. J. Q. B. 480, 53 L. T. 227, 33 W. R. 875, 49 J. P. 775 | 364               |
| T.                                                                  |                                                                               |                   |
| <i>Tabor v. Prentice</i> .. .. .                                    | 52 L. T. 85, 32 W. R. 872                                                     | 526               |
| <i>Tambracherry Estates Co., Re</i> .. ..                           | 29 Ch. D. 683, 54 L. J. Ch. 792, 52 L. T. 712                                 | 93                |
| <i>Tanner v. Carter (or Castor)</i> .. .. .                         | 55 L. J. Q. B. 27, 34 W. R. 41                                                | 281               |
| <i>Tarleton v. Bruton. Re Roberts</i> .. ..                         | 30 Ch. D. 234, 53 L. J. Ch. 1023, 53 L. T. 432, 32 W. R. 986                  | 514               |
| <i>Tate &amp; Sons v. Hyslop</i> .. .. .                            | 15 Q. B. D. 368, 54 L. J. Q. B. 592, 53 L. T. 581                             | 196               |
| <i>Taylor, Re. Ex parte Board of Trade</i> ..                       | 51 L. T. 711, W. N. 1884, 219                                                 | 33                |
| ———— <i>Taylor v. Ley</i> .. .. .                                   | 52 L. T. 210, 839, W. N. 1885, 6, 158                                         | 515               |
| ———— <i>v. Friern Barnet Local Board</i> ..                         | W. N. 1885, 7                                                                 | 232               |
| “ Temple Bar,” <i>The</i> .. .. .                                   | 11 P. D. 6, 34 W. R. 68, W. N. 1885, 195                                      | 358               |
| <i>Teuliere v. St. Mary Abbott's Vestry, Kensington</i> .. .. .     | 30 Ch. D. 642, 55 L. J. Ch. 23, 53 L. T. 422                                  | 252               |
| <i>Thomas, Re. Ex parte Poppleton</i> .. ..                         | 14 Q. B. D. 379, 54 L. J. Q. B. 336, 51 L. T. 602, 33 W. R. 583               | 99                |
| ———— <i>v. Spencer. Re Spencer</i> .. ..                            | 30 Ch. D. 183, 55 L. J. Ch. 80, 34 W. R. 62                                   | 186               |
| <i>Thompson &amp; Curzon, Re</i> .. .. .                            | 29 Ch. D. 177, 54 L. J. Ch. 610, 52 L. T. 498, 33 W. R. 688                   | 180               |
| ———— <i>&amp; Wright, Re</i> .. .. .                                | 13 Q. B. D. 633, 54 L. J. Q. B. 32, 51 L. T. 635, 33 W. R. 96                 | 198               |
| ————, <i>Re</i> .. .. .                                             | 30 Ch. D. 441, 53 L. T. 479, 34 W. R. 112                                     | 439               |
| <i>Thorp (or Thorpe) v. Cregeen</i> .. .. .                         | 55 L. J. Q. B. 80, 33 W. R. 844                                               | 54                |
| ———— <i>v. Dakin</i> .. .. .                                        | 52 L. T. 856                                                                  | 26                |
| <i>Thorpe v. Linney. Moorhouse v. Linney</i> ..                     | 15 Q. B. D. 273, 53 L. T. 343, 33 W. R. 704, 49 J. P. 471                     | 268               |
| <i>Three Towns Banking Co. v. Maddever. Re Maddever</i> .. .. .     | 27 Ch. D. 523, 53 L. J. Ch. 998, 52 L. T. 35, 33 W. R. 286                    | 168               |
| <i>Throssell v. Marsh</i> .. .. .                                   | 53 L. T. 321                                                                  | 53                |
| <i>Tinnuchi v. Smart</i> .. .. .                                    | 10 P. D. 184, 54 L. J. P. 92, 34 W. R. 46, 49 J. P. 792                       | 6                 |

| Name of Case.                                                    | Reference to Reports.                                                                                         | Column of Digest. |
|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-------------------|
| Tippett, Ex parte. Re Tippett .. ..                              | W. N. 1885, 157 .. ..                                                                                         | 24                |
| Tischler v. Apthorpe .. ..                                       | 52 L. T. 814, 33 W. R. 548, 49 J. P. 372 .. ..                                                                | 388               |
| Todd v. Robinson (No. 2) .. ..                                   | 14 Q. B. D. 739, 54 L. J. Q. B. 47, 52 L. T. 120, 49 J. P. 278 .. ..                                          | 372               |
| Tollemache, Re. Ex parte Anderson .. ..                          | 14 Q. B. D. 606, 54 L. J. Q. B. 383, 52 L. T. 786 .. ..                                                       | 147               |
| ————— Bonham .. ..                                               | 14 Q. B. D. 604, 54 L. J. Q. B. 388, 52 L. T. 17, 33 W. R. 628 .. ..                                          | 38                |
| ————— Edwards .. ..                                              | 14 Q. B. D. 415 .. ..                                                                                         | 37                |
| ————— Revell (No. 1) (see Ex parte Edwards, Re Tollemache) .. .. | 13 Q. B. D. 720, 54 L. J. Q. B. 79, 51 L. T. 376, 33 W. R. 288 .. ..                                          | 37                |
| ————— Revell (No. 2) .. ..                                       | 13 Q. B. D. 727, 54 L. J. Q. B. 82, 51 L. T. 379, 33 W. R. 289 .. ..                                          | 39                |
| Tomlinson v. Gilby .. ..                                         | 54 L. J. P. 80, 33 W. R. 800, 49 J. P. 632 .. ..                                                              | 6                 |
| ————— v. Land and Finance Corporation .. ..                      | 14 Q. B. D. 539, 53 L. J. Q. B. 561 .. ..                                                                     | 321               |
| Tonbridge Highway Board v. Sevenoaks Highway Board .. ..         | 33 W. R. 306, 49 J. P. 340 .. ..                                                                              | 176               |
| Tottenham v. Swansea Zinc Ore Co. .. ..                          | 52 L. T. 738, W. N. 1885, 69 .. ..                                                                            | 165               |
| Toutt's Will, Re. Re Martyn .. ..                                | 26 Ch. D. 745, 54 L. J. Ch. 1016, 50 L. T. 552, 32 W. R. 734 .. ..                                            | 479               |
| Toward, Re. Ex parte Moss. Ex parte Hawkes .. ..                 | 14 Q. B. D. 310, 54 L. J. Q. B. 126, 52 L. T. 188 .. ..                                                       | 45                |
| Tozier v. Hawkins .. ..                                          | 15 Q. B. D. 650 .. ..                                                                                         | 361               |
| Trafford v. Blanc. Re Trufort .. ..                              | 34 W. R. 56, 53 L. T. 498 .. ..                                                                               | 309               |
| Treadwell v. L. & S. W. Ry. Co. .. ..                            | 54 L. J. Ch. 565, 51 L. T. 894, 33 W. R. 272, W. N. 1884, 233 .. ..                                           | 224               |
| Trott v. Buchanan .. ..                                          | 28 Ch. D. 446, 54 L. J. Ch. 678, 52 L. T. 248, 33 W. R. 339 .. ..                                             | 157               |
| Trower v. Law Life Assurance Society .. ..                       | 54 L. J. Q. B. 407, 52 L. T. 888, 33 W. R. 647 .. ..                                                          | 358               |
| Trufort, Re. Trafford v. Blanc .. ..                             | 34 W. R. 56, 53 L. T. 498 .. ..                                                                               | 309               |
| Truman v. London, Brighton, and South Coast Railway .. ..        | 29 Ch. D. 89, 54 L. J. Ch. 849, 52 L. T. 522, 32 W. R. 364, 33 W. R. 762, 49 J. P. 581, W. N. 1885, 222 .. .. | 276               |
| Trye v. Sullivan. Re Young (No. 1) .. ..                         | 28 Ch. D. 705, 54 L. J. Ch. 1065, 52 L. T. 754, 33 W. R. 729 .. ..                                            | 18                |
| ————— (No. 2) .. ..                                              | 52 L. T. 754, W. N. 1885, 36 .. ..                                                                            | 518               |
| Tucker, Re. Emanuel v. Parfitt .. ..                             | 54 L. J. Ch. 874, 52 L. T. 923, 33 W. R. 932, W. N. 1885, 148 .. ..                                           | 180               |
| Tufnell & Ponsonby's Case .. ..                                  | 29 Ch. D. 421, 52 L. T. 933 .. ..                                                                             | 81                |
| Tunbridge Highway Board v. Sevenoaks Highway Board .. ..         | 33 W. R. 306, 49 J. P. 340 .. ..                                                                              | 176               |
| Turnbull v. Forman .. ..                                         | 15 Q. B. D. 234, 54 L. J. Q. B. 489, 53 L. T. 128, 33 W. R. 768, 49 J. P. 708 .. ..                           | 179               |
| Turner, Re. Glenister v. Harding .. ..                           | 29 Ch. D. 985, 54 L. J. Ch. 1089, 53 L. T. 528 .. ..                                                          | 147               |
| ————— Turner v. Turner (No. 1) .. ..                             | 51 L. T. 497, W. N. 1884, 191 .. ..                                                                           | 152               |
| ————— (No. 2) .. ..                                              | 53 L. T. 379 .. ..                                                                                            | 8                 |
| Turner's Settled Estate, Re .. ..                                | 28 Ch. D. 205, 54 L. J. Ch. 690, 52 L. T. 70, 33 W. R. 265 .. ..                                              | 299               |
| Turner v. Hellard. Re Harrison .. ..                             | 30 Ch. D. 390 .. ..                                                                                           | 507               |
| ————— v. Nicholson. Re Pickard .. ..                             | 53 L. T. 293, W. N. 1885, 137 .. ..                                                                           | 282               |
| Turquand, Ex parte. Re Parker & Parker (No. 1) .. ..             | 14 Q. B. D. 405, 51 L. T. 667, 33 W. R. 752 .. ..                                                             | 30                |

| Name of Case.                                              | Reference to Reports.                                                                                         | Column<br>of<br>Digest. |
|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-------------------------|
| Turquand, Ex parte. Re Parker & Parker<br>(No. 2) .. .. .  | 14 Q. B. D. 407, 15 Q. B. D. 196,<br>54 L. J. Q. B. 372, 52 L. T. 185,<br>670, 33 W. R. 262 .. .. .           | 33                      |
| (No. 3) .. .. .                                            | 14 Q. B. D. 636, 54 L. J. Q. B. 242,<br>53 L. T. 579, 33 W. R. 437 .. .. .                                    | 35, 57                  |
| Tweedie & Miles, Re .. .. .                                | 27 Ch. D. 315, 54 L. J. Ch. 71, 33<br>W. R. 133 .. .. .                                                       | 412                     |
| Tweedy, Re .. .. .                                         | 28 Ch. D. 529, 54 L. J. Ch. 304,<br>331, 51 L. T. 679, 52 L. T. 65,<br>33 W. R. 313 .. .. .                   | 481                     |
| Tyneside Permanent Benefit Building Society,<br>Re .. .. . | W. N. 1885, 148 .. .. .                                                                                       | 100                     |
| U.                                                         |                                                                                                               |                         |
| United Shepherd's Wheal Rose Co., Re .. .. .               | W. N. 1885, 15 .. .. .                                                                                        | 449                     |
| — Stock Exchange Co., Re .. .. .                           | 51 L. T. 687, W. N. 1884, 251 .. .. .                                                                         | 102                     |
| — Stock Exchange, Re. Ex parte Philp<br>& Kidd .. .. .     | 28 Ch. D. 183, 54 L. J. Ch. 310,<br>52 L. T. 590, 33 W. R. 389 .. .. .                                        | 102                     |
| — Telephone Co. v. Sharples .. .. .                        | 29 Ch. D. 164, 54 L. J. Ch. 633,<br>52 L. T. 384, 33 W. R. 444 .. .. .                                        | 285                     |
| Upton v. Brown .. .. .                                     | 26 Ch. D. 588, 54 L. J. Ch. 614,<br>51 L. T. 591, 32 W. R. 679 .. .. .                                        | 416                     |
| Uren v. Bristol Waterworks Co. .. .. .                     | 15 Q. B. D. 637, 54 L. J. M. C. 97,<br>52 L. T. 655, 49 J. P. 564 .. .. .                                     | 500                     |
| Uzielli v. Boston Marine Insurance Co. .. .. .             | 15 Q. B. D. 11, 54 L. J. Q. B. 142,<br>52 L. T. 787, 33 W. R. 293 .. .. .                                     | 197                     |
| V.                                                         |                                                                                                               |                         |
| Vardon's Trusts, Re .. .. .                                | 28 Ch. D. 124, 54 L. J. Ch. 244,<br>51 L. T. 884, 33 W. R. 297,<br>W. N. 1885, 224 .. .. .                    | 140                     |
| Vaughan, Ex parte. Re Riddeough .. .. .                    | 14 Q. B. D. 25, 33 W. R. 151 .. .. .                                                                          | 122                     |
| Vavasour (a lunatic), Re .. .. .                           | 29 Ch. D. 306, 53 L. T. 412 .. .. .                                                                           | 234                     |
| "Vera Cruz," The .. .. .                                   | 10 App. Cas. 59, 54 L. J. P. 9, 52<br>L. T. 474, 33 W. R. 477, 49<br>J. P. 324, 5 Asp. M. C. 270, 386 .. .. . | 202                     |
| "Victor Coracevich" (or Covacevich) .. .. .                | 10 P. D. 40, 54 L. J. P. 48, 52 L. T.<br>632 .. .. .                                                          | 306                     |
| Vint v. Hudspeth (or Hudspith) (No. 1) .. .. .             | 29 Ch. D. 322, 54 L. J. Ch. 844,<br>52 L. T. 741, 33 W. R. 738 .. .. .                                        | 313                     |
| — (No. 2) .. .. .                                          | 30 Ch. D. 24, 54 L. J. Ch. 844,<br>52 L. T. 774, 33 W. R. 738 .. .. .                                         | 151                     |
| Voinet v. Barrett .. .. .                                  | 54 L. J. Q. B. 521, 55 L. J. Q. B. 39,<br>34 W. R. 161 .. .. .                                                | 166                     |
| Vollum v. Revett. Re Youngs .. .. .                        | 30 Ch. D. 421, 33 W. R. 880 .. .. .                                                                           | 152                     |
| Von Brockdorff v. Malcolm .. .. .                          | 30 Ch. D. 172, 53 L. T. 263, 33<br>W. R. 934 .. .. .                                                          | 300                     |
| Vulcan Ironworks Co., Re .. .. .                           | W. N. 1885, 120 .. .. .                                                                                       | 94                      |
| W.                                                         |                                                                                                               |                         |
| Wade v. Wilson. Re Bentley .. .. .                         | 54 L. J. Ch. 782, 33 W. R. 610 .. .. .                                                                        | 403                     |
| Wadham v. N. E. Ry. Co. .. .. .                            | 14 Q. B. D. 747, 54 L. J. Q. B. 343,<br>52 L. T. 894, 33 W. R. 215, 49<br>J. P. 599, W. N. 1885, 221 .. .. .  | 217                     |

| Name of Case.                                                  | Reference to Reports.                                                                   | Column of Digest. |
|----------------------------------------------------------------|-----------------------------------------------------------------------------------------|-------------------|
| Wadsworth, Re. Rhodes <i>v.</i> Sugden .. ..                   | 29 Ch. D. 517, 54 L. J. Ch. 638, 52 L. T. 613, 33 W. R. 558 ..                          | 448               |
| Wagg <i>v.</i> Shand. Re Johnson .. ..                         | 53 L. T. 136 .. ..                                                                      | 153               |
| Wagstaff <i>v.</i> Shorthorn Dairy Co. .. ..                   | 1 C. & E. 324 .. ..                                                                     | 129               |
| Wait, Re. Workman <i>v.</i> Petgrave .. ..                     | 30 Ch. D. 617, 54 L. J. Ch. 1172, 53 L. T. 336, 33 W. R. 930 ..                         | 301               |
| Wakefield <i>v.</i> Maffett .. ..                              | 10 App. Cas. 422, 55 L. J. Ch. 4, 53 L. T. 169, 13 L. R. Ir. 17, 15 L. R. Jr. 218 .. .. | 413               |
| Walcott <i>v.</i> Lyons .. ..                                  | 29 Ch. D. 584, 54 L. J. Ch. 847, 52 L. T. 399 .. ..                                     | 345               |
| Walkden Aerated Waters Co.'s Application, Re                   | 54 L. J. Ch. 394 .. ..                                                                  | 465               |
| Walker, Re, Ex parte Black. Ex parte Barter                    | 26 Ch. 510, 53 L. J. Ch. 802, 51 L. T. 811, 32 W. R. 809 ..                             | 40                |
| —— <i>v.</i> Appach (or Appack). Re Hobson                     | 53 L. T. 627, 34 W. R. 70, W. N. 1885, 184 .. ..                                        | 12                |
| —— <i>v.</i> Hirsch .. ..                                      | 27 Ch. D. 460, 54 L. J. Ch. 315, 51 L. T. 481, 32 W. R. 992 ..                          | 283               |
| Wallace, Ex parte. Re Wallace .. ..                            | 14 Q. B. D. 22, 54 L. J. Q. B. 293, 51 L. T. 551, 33 W. R. 66 ..                        | 36                |
| ——, Re. Ex parte Campbell .. ..                                | 15 Q. B. D. 213, 54 L. J. Q. B. 382, 53 L. T. 208 .. ..                                 | 25                |
| Wallis, Re. Ex parte Sully .. ..                               | 14 Q. B. D. 950, 52 L. T. 625, 33 W. R. 733 .. ..                                       | 43                |
| Walsh, Re. Ex parte the Trustee .. ..                          | 52 L. T. 694 .. ..                                                                      | 21                |
| Walter <i>v.</i> Emmott .. ..                                  | 54 L. J. Ch. 1059, 53 L. T. 437, W. N. 1885, 156 .. ..                                  | 273               |
| —— (or Walker) <i>v.</i> James .. ..                           | 53 L. T. 597, 34 W. R. 29 .. ..                                                         | 359               |
| Walton <i>v.</i> Edge .. ..                                    | 10 App. Cas. 33, 54 L. J. Ch. 362, 52 L. T. 666, 33 W. R. 417, 49 J. P. 468 .. ..       | 66                |
| Wandsworth Board of Works <i>v.</i> United Telephone Co. .. .. | 13 Q. B. D. 904, 53 L. J. Q. B. 449, 51 L. T. 148, 32 W. R. 776, 48 J. P. 676 .. ..     | 248               |
| Ward, Re .. ..                                                 | 28 Ch. D. 719, 54 L. J. Ch. 508, 33 W. R. 783 .. ..                                     | 445               |
| Ward's Estates, Re .. ..                                       | 28 Ch. D. 100, 54 L. J. Ch. 231, 33 W. R. 149 .. ..                                     | 220               |
| Warr <i>v.</i> Gilham .. ..                                    | 52 L. T. 326, 49 J. P. 357, 15 Cox, C. C. 719 .. ..                                     | 501               |
| Warren, Ex parte. Nichols, Ex parte, Re Holland .. ..          | 15 Q. B. D. 48, 54 L. J. Q. B. 320, 53 L. T. 68, 33 W. R. 459, 472 ..                   | 421               |
| Washburn & Moen Manufacturing Co. <i>v.</i> Paterson .. ..     | 29 Ch. D. 48, 54 L. J. Ch. 643, 52 L. T. 705, 33 W. R. 403 ..                           | 322               |
| Waterhouse <i>v.</i> Gilbert .. ..                             | 15 Q. B. D. 569, 54 L. J. Q. B. 440, 52 L. T. 784 .. ..                                 | 339               |
| Watson, Re. Ex parte Oram .. ..                                | 15 Q. B. D. 399, 52 L. T. 785, 33 W. R. 890 .. ..                                       | 35                |
| Watson <i>v.</i> Young .. ..                                   | 28 Ch. D. 436, 54 L. J. Ch. 502, 33 W. R. 637 .. ..                                     | 525               |
| Watts, Re. Cornford <i>v.</i> Elliott .. ..                    | 29 Ch. D. 947 54 L. J. Ch. 308, 53 L. T. 426, 33 W. R. 885 .. ..                        | 73                |
| Waye <i>v.</i> Thompson .. ..                                  | 15 Q. B. D. 342, 54 L. J. M. C. 140, 53 L. T. 358, 33 W. R. 733, 49 J. P. 693 .. ..     | 375               |
| Weaver, Re. Higgs <i>v.</i> Weaver .. ..                       | 29 Ch. D. 236, 54 L. J. Ch. 749, 52 L. T. 512, 33 W. R. 874 ..                          | 22                |
| Webb <i>v.</i> Clark .. ..                                     | W. N. 1884, 216 .. ..                                                                   | 386               |
| —— <i>v.</i> Smith .. ..                                       | 30 Ch. D. 192 .. ..                                                                     | 18                |



| Name of Case.                                                         | Reference to Reports.                                                                | Column of Digest. |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------|-------------------|
| Webster & Co. v. Bond & Storey .. ..                                  | 1 C. & E. 338 .. ..                                                                  | 426               |
| Webster, Re. Derby Union Guardians v. Sharratt .. ..                  | 27 Ch. D. 710, 54 L. J. Ch. 276, 51 L. T. 319 .. ..                                  | 234               |
| — v. Armstrong .. ..                                                  | 54 L. J. Q. B. 236 .. ..                                                             | 146               |
| — v. Myer .. ..                                                       | 14 Q. B. D. 231, 54 L. J. Q. B. 101, 51 L. T. 560, 33 W. R. 407 ..                   | 341               |
| Weddall, Parker & Parker, Re .. ..                                    | W. N. 1884, 217 .. ..                                                                | 441               |
| Weekes v. King .. ..                                                  | 53 L. T. 51, 49 J. P. 709 .. ..                                                      | 371               |
| Weguelin (or Weguellin) v. Wyatt (or Wayall) ..                       | 14 Q. B. D. 838, 54 L. J. Q. B. 308, 52 L. T. 807, 33 W. R. 566, 49 J. P. 486 .. ..  | 388               |
| Welch v. Peterborough (Bishop of) .. ..                               | 15 Q. B. D. 432 .. ..                                                                | 9                 |
| Weld, Re (lunatic) .. ..                                              | 28 Ch. D. 514, 52 L. T. 703, 33 W. R. 845 .. ..                                      | 234               |
| Weldon v. De Bathe .. ..                                              | 14 Q. B. D. 339, 54 L. J. Q. B. 113, 53 L. T. 520, 33 W. R. 328 ..                   | 179               |
| — v. Gounod .. ..                                                     | 15 Q. B. D. 622 .. ..                                                                | 353               |
| — v. Neal .. ..                                                       | 15 Q. B. D. 471, 54 L. J. Q. B. 399, 33 W. R. 581 .. ..                              | 172               |
| — v. Weldon (No 2) .. ..                                              | 10 P. D. 72, 54 L. J. P. 26, 60, 52 L. T. 233, 33 W. R. 370, 427, 49 J. P. 517 .. .. | 331               |
| — v. Winslow .. ..                                                    | 13 Q. B. D. 784, 53 L. J. Q. B. 528, 51 L. T. 643, 33 W. R. 219 ..                   | 346               |
| Weller v. Stone [ .. ..                                               | 54 L. J. Ch. 497, 53 L. T. 361, 33 W. R. 421, W. N. 1885, 13 ..                      | 236               |
| Wenlock (Baroness) v. River Dee Co. ..                                | 10 App. Cas. 354, 54 L. J. Q. B. 577, 53 L. T. 62, 49 J. P. 773 .. ..                | 115               |
| West Bromwich School Board v. West Bromwich Overseers .. ..           | 13 Q. B. D. 929, 53 L. J. M. C. 153, 52 L. T. 164, 32 W. R. 866, 48 J. P. 808 .. ..  | 294               |
| Westbury-on-Severn Rural Sanitary Authority v. Meredith .. ..         | 30 Ch. D. 387, 52 L. T. 839 .. ..                                                    | 342               |
| West Devon Great Consols Mine, Re .. ..                               | 27 Ch. D. 106, 51 L. T. 841 .. ..                                                    | 82                |
| — London Commercial Bank v. Reliance Permanent Building Society .. .. | 29 Ch. D. 954, 54 L. J. Ch. 1081, 53 L. T. 442, 33 W. R. 916 ..                      | 260               |
| — Middlesex Waterworks Co. v. Coleman ..                              | 14 Q. B. D. 529, 54 L. J. M. C. 70, 52 L. T. 578, 33 W. R. 549, 49 J. P. 341 .. ..   | 500               |
| Westropp v. Elligott .. ..                                            | 9 App. Cas. 815, 52 L. T. 147, 14 L. R. Ir. 319 .. ..                                | 199               |
| Westwood v. Docwra .. ..                                              | W. N. 1884, 232 .. ..                                                                | 153               |
| Wheatcroft v. Matlock Local Board .. ..                               | 52 L. T. 356 .. ..                                                                   | 374               |
| Wheatley, Re. Smith v. Spence .. ..                                   | 27 Ch. D. 606, 54 L. J. Ch. 201, 51 L. T. 681, 33 W. R. 275 ..                       | 139               |
| — v. Silkstone and Haigh Moor Coal Co. .. ..                          | 29 Ch. D. 715, 54 L. J. Ch. 778, 52 L. T. 798, 33 W. R. 797 ..                       | 84                |
| Wheeler v. United Telephone Co. .. ..                                 | 13 Q. B. D. 597, 53 L. J. Q. B. 466, 50 L. T. 749, 33 W. R. 295, 1 C. & E. 242 .. .. | 351               |
| Whetham v. Davey .. ..                                                | 30 Ch. D. 574, 53 L. T. 501, 33 W. R. 925 .. ..                                      | 257               |
| "Whickham," The .. ..                                                 | 53 L. T. 236 .. ..                                                                   | 328               |
| White, Ex parte. Re White .. ..                                       | 14 Q. B. D. 600, 54 L. J. Q. B. 384, 33 W. R. 670 .. ..                              | 28                |
| — v. Ditchfield .. ..                                                 | 10 P. D. 69, 52 L. T. 520, 5 Asp. M. C. 400 .. ..                                    | 435               |
| Whitehead, Re. (Solicitor) .. ..                                      | 28 Ch. D. 614, 54 L. J. Ch. 796, 52 L. T. 703, 33 W. R. 601 ..                       | 451               |

| Name of Case.                                                            | Reference to Reports.                                                                                            | Column of Digest. |
|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-------------------|
| Whitehead, Re. Ex parte Routh .. ..                                      | 14 Q. B. D. 419, 54 L. J. Q. B. 88, 240, 52 L. T. 265, 597, 33 W. R. 230, 471 49 J. P. 405, W. N. 1885, 52 .. .. | 185               |
| "White Rose," Trade-Mark, Re .. ..                                       | 30 Ch. D. 505, 54 L. J. Ch. 961, 53 L. T. 33, 33 W. R. 796 .. ..                                                 | 464               |
| Whitham, Re. Whitham v. Whitham .. ..                                    | W. N. 1885, 176, 179 .. ..                                                                                       | 314               |
| Whiting v. East London Waterworks Co. ..                                 | 1 C. & E. 331 .. ..                                                                                              | 501               |
| Whyte v. Ahrens .. ..                                                    | 26 Ch. D. 717, 54 L. J. Ch. 145, 50 L. T. 344, 32 W. R. 649 ..                                                   | 327               |
| Wicksteed v. Biggs .. ..                                                 | 54 L. J. Ch. 967, 52 L. T. 428 ..                                                                                | 323               |
| Wiggeston (or Wyggeston) Hospital and Stephenson, Re .. ..               | 54 L. J. Q. B. 248, 52 L. T. 101, 33 W. R. 551 .. ..                                                             | 344               |
| Wilkins, Re. Wilkins v. Rotherham .. ..                                  | 27 Ch. D. 703, 54 L. J. Ch. 188, 33 W. R. 42 .. ..                                                               | 155               |
| Wilkes v. Bannister .. ..                                                | 30 Ch. D. 512, 54 L. J. Ch. 1139, 53 L. T. 247, 33 W. R. 922 ..                                                  | 511               |
| Williams (or Williames), Re. Andrew v. Williams .. ..                    | 52 L. T. 41, W. N. 1884, 242, W. N. 1885, 158 .. ..                                                              | 498               |
| — v. G. W. Ry. Co. .. ..                                                 | 52 L. T. 250, 49 J. P. 439 .. ..                                                                                 | 108               |
| — v. Mercier .. ..                                                       | 10 App. Cas. 1, 54 L. J. Q. B. 148, 52 L. T. 662, 33 W. R. 373, 49 J. P. 484 .. ..                               | 408               |
| — v. Williams .. ..                                                      | 51 L. T. 779, 33 W. R. 118, W. N. 1884, 198 .. ..                                                                | 523               |
| "William Symington," The .. ..                                           | 10 P. D. 1, 54 L. J. P. 4, 51 L. T. 461, 33 W. R. 371, 5 Asp. M. C. 293 .. ..                                    | 305               |
| Willis, Winder & Co. v. Combe .. ..                                      | 1 C. & E. 353 .. ..                                                                                              | 420               |
| Willmott (or Wilmott) v. Freehold Property Co. (No. 1.) .. ..            | 51 L. T. 552 .. ..                                                                                               | 351               |
| — (No. 2) .. ..                                                          | W. N. 1885, 65 .. ..                                                                                             | 322               |
| — (No. 3) .. ..                                                          | 52 L. T. 743, W. N. 1885, 77, 33 W. R. 554 .. ..                                                                 | 320               |
| Willmott v. London Celluloid Co. .. ..                                   | 52 L. T. 642, W. N. 1885, 29 .. ..                                                                               | 83                |
| Willoughby (an infant), Re .. ..                                         | 30 Ch. D. 324, 54 L. J. Ch. 1122, 52 L. T. 846, 33 W. R. 724, 850 ..                                             | 189               |
| Wilson (a lunatic), Re .. ..                                             | 29 Ch. D. 790, 53 L. T. 406 .. ..                                                                                | 440               |
| —, Re. Alexander v. Calder .. ..                                         | 28 Ch. D. 457, 54 L. J. Ch. 487, 33 W. R. 579 .. ..                                                              | 315               |
| Wilson's (Elisha) Estates, Re .. ..                                      | W. N. 1885, 14 .. ..                                                                                             | 220               |
| Withall v. Blyton .. ..                                                  | W. N. 1885, 22 .. ..                                                                                             | 265               |
| — v. Nixon .. ..                                                         | 28 Ch. D. 413, 54 L. J. Ch. 616, 33 W. R. 565 .. ..                                                              | 258               |
| Wittmann } v. Oppenheim .. ..                                            | 27 Ch. D. 260, 54 L. J. Ch. 56, 50 L. T. 713, 32 W. R. 766 ..                                                    | 114               |
| Wittman } .. ..                                                          |                                                                                                                  |                   |
| Willman } .. ..                                                          |                                                                                                                  |                   |
| Wolverhampton and Staffordshire Banking Co., Ex parte. Re Campbell .. .. | 14 Q. B. D. 32, 33 W. R. 642 .. ..                                                                               | 44                |
| Womersley, Re. Etheridge v. Womersley ..                                 | 29 Ch. D. 557, 54 L. J. Ch. 965, 53 L. T. 260, 33 W. R. 935 ..                                                   | 153               |
| Wood v. Douglas. Re Douglas .. ..                                        | 28 Ch. D. 327, 54 L. J. Ch. 421, 52 L. T. 131, 33 W. R. 390 ..                                                   | 133               |
| — (or Morrison, Wood & Co.) v. G. E. Ry. Co. .. ..                       | 53 L. T. 384, W. N. 1885, 175 .. ..                                                                              | 223               |
| Wood (or Woods, or Morrison Wood) v. West Ham Gas Co. .. ..              | 52 L. T. 817, 33 W. R. 799, 49 J. P. 662, W. N. 1885, 138 .. ..                                                  | 169               |
| — v. Lambert. Re Wood's Trade-Mark ..                                    | W. N. 1885, 99 .. ..                                                                                             | 469               |
| — (or Woods) v. Wood .. ..                                               | 10 P. D. 172, 33 W. R. 323 .. ..                                                                                 | 204               |

| Name of Case.                                                          | Reference to Reports.                                                                            | Column of Digest. |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------|
| Woodgate v. G. W. Ry. Co. .. .. .                                      | 51 L. T. 826, 33 W. R. 428, 49 J. P. 196                                                         | 378               |
| Woodruff v. Brecon and Merthyr Tydvil Ry. Co. .. .. .                  | 28 Ch. D. 190, 54 L. J. Ch. 29, 620, 51 L. T. 536, 52 L. T. 69, 33 W. R. 125                     | 380               |
| Woolhouse (A. M.), Re .. .. .                                          | 28 Ch. D. 515, n. .. .. .                                                                        | 234               |
| Workman v. Petgrave. Re Wait .. .. .                                   | 30 Ch. D. 617, 54 L. J. Ch. 1172, 53 L. T. 336, 33 W. R. 930                                     | 301               |
| Worthington v. Gill .. .. .                                            | 49 J. P. 629                                                                                     | 174               |
| Wragg's Trade-mark, Re .. .. .                                         | 29 Ch. D. 551, 54 L. J. Ch. 391, 52 L. T. 467                                                    | 467               |
| Wrey, Re. Stuart v. Wrey .. .. .                                       | 30 Ch. D. 507, 54 L. J. Ch. 1098, 53 L. T. 334                                                   | 520               |
| Wright v. Harris .. .. .                                               | 49 J. P. 628                                                                                     | 193               |
| — v. Midland Ry. Co. .. .. .                                           | 51 L. T. 539, W. N. 1885, 39                                                                     | 271               |
| Wright's Trustees and Marshall, Re .. .. .                             | 28 Ch. D. 93, 54 L. J. Ch. 60, 51 L. T. 781, 33 W. R. 304                                        | 417               |
| Wroughton, Re. Re Montagu .. .. .                                      | 28 Ch. D. 82, 54 L. J. Ch. 397, 33 W. R. 322                                                     | 189               |
| Wyggeston (or Wigggeston) Hospital and Stephenson, Re .. .. .          | 54 L. J. Q. B. 248, 52 L. T. 101, 33 W. R. 551                                                   | 344               |
| Y.                                                                     |                                                                                                  |                   |
| Yates v. Reg. .. .. .                                                  | 14 Q. B. D. 648, 54 L. J. Q. B. 258, 52 L. T. 305, 33 W. R. 482, 49 J. P. 436, 15 Cox, C. C. 686 | 125               |
| Yeo v. Dawe .. .. .                                                    | 53 L. T. 125, 33 W. R. 739                                                                       | 389               |
| Yorkshire Tannery Co. v. Eglington (or Eglington) Chemical Co. .. .. . | 54 L. J. Ch. 81, 33 W. R. 162, W. N. 1884, 200                                                   | 360               |
| Young, Ex parte. Re Young .. .. .                                      | W. N. 1885, 12                                                                                   | 25                |
| —, Re. Trye v. Sullivan (No. 1) .. .. .                                | 28 Ch. D. 705, 54 L. J. Ch. 1065, 52 L. T. 754, 33 W. R. 729                                     | 18                |
| — (No. 2) .. .. .                                                      | 52 L. T. 754, W. N. 1885, 36                                                                     | 518               |
| — and Hareton's (or Harston's) Contract, Re .. .. .                    | 29 Ch. D. 691, 54 L. J. Ch. 1144, 52 L. T. 571, 33 W. R. 516, 34 W. R. 84                        | 488               |
| Youngs, Re. Doggett v. Revett .. .. .                                  | 30 Ch. D. 421, 33 W. R. 880                                                                      | 152               |
| "Yourri," The (Russian S.S.) v. The "Spearman," (British S.S.) .. .. . | 10 App. Cas. 276, 53 L. T. 29                                                                    | 428               |
| Z.                                                                     |                                                                                                  |                   |
| Zerfass, Ex parte. Re Sandwell .. .. .                                 | 14 Q. B. D. 960, 54 L. J. Q. B. 323, 52 L. T. 692, 33 W. R. 522                                  | 30                |



## TABLE OF CASES

FOLLOWED, OVERRULED, OR SPECIALLY CONSIDERED.

|                                                                                                                                                      | Column<br>of<br>Digest. |                                                                                                                                                                      | Column<br>of<br>Digest. |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Aberdeen (Magistrates) v. More</i> (Hume's Dec. 502) examined.<br><i>Re LAUDERDALE PEERAGE</i> -                                                  | 290                     | <i>Atwood v. Sellar</i> (5 Q. B. D. 286, 49 L. J. Q. B. 515, 42 L. T. 644, 28 W. R. 604) discussed.<br><i>SVENDSEN v. WALLACE</i> -                                  | 194                     |
| <i>Abram v. Cunningham</i> (2 Lev. 182) distinguished.<br><i>BOXALL v. BOXALL</i> -                                                                  | 6                       | <i>Auckland v. Westminster Board of Works</i> (L. R. 7 Ch. 597, 41 L. J. Ch. 723, 26 L. T. 961, 20 W. R. 845) distinguished.<br><i>BARLOW v. KENSINGTON VESTRY</i> - | 249                     |
| <i>Agra Bank, Ex parte</i> (L. R. 3 Ch. 555) discussed.<br><i>SOCIÉTÉ GÉNÉRALE v. TRAMWAYS UNION</i> -                                               | 96                      | <i>Aynsley v. Glover</i> (L. R. 18 Eq. 544) considered.<br><i>HOLLAND v. WORLEY</i> -                                                                                | 226                     |
| <i>Alison v. Foyster</i> (W. N. 1871, p. 48) explained.<br><i>ALISON v. CHARLESWORTH</i> -                                                           | 232                     | <i>Backhouse v. Bonomi</i> (E. B. & E. 622, 9 H. L. C. 503) discussed.<br><i>MITCHELL v. DARLEY MAIN CO.</i> -                                                       | 130                     |
| <i>Ambrose Lake, &amp;c., Mining Co., Re</i> (14 Ch. D. 390, 49 L. J. Ch. 457, 42 L. T. 604, 28 W. R. 783) discussed.<br><i>Re CAPE BRETON CO.</i> - | 86                      | <i>Baily, Ex parte</i> (L. R. 3 Ch. App. 592, 19 L. T. 58) distinguished.<br><i>Ex parte BOYLE</i> -                                                                 | 82                      |
| <i>Ames, Re</i> (25 Ch. D. 72, 32 W. R. 287) distinguished.<br><i>Re CHAPPLE</i> -                                                                   | 475                     | <i>Baines v. Bromley</i> (6 Q. B. D. 691) explained.<br><i>LUND v. CAMPBELL</i> -                                                                                    | 320                     |
| <i>Ames v. Cadogan</i> (12 Ch. D. 868, 41 L. T. 211, 27 W. R. 905) commented on.<br><i>VON BROCKDORFF v. MALCOLM</i> -                               | 300                     | <i>Baker v. Carter</i> (1 V. & C. Ex. 250) not followed.<br><i>FLOWRIGHT v. LAMBERT</i> -                                                                            | 492                     |
| <i>Ancona v. Waddell</i> (10 Ch. D. 157, 27 W. R. 186) distinguished.<br><i>ROBERTSON v. RICHARDSON</i> -                                            | 415                     | <i>Ball's Trust</i> (11 Ch. D. 270, 48 L. J. Ch. 279, 40 L. T. 880, 27 W. R. 409) considered.<br><i>HARDMAN v. MAFFETT</i> -                                         | 414                     |
| <i>Andrew v. Andrew</i> (1 Ch. D. 410, 45 L. J. Ch. 232, 34 L. T. 82, 24 W. R. 349) followed.<br><i>Re JAMES</i> -                                   | 404                     | <i>Barker v. Lavery</i> (col. 355) distinguished.<br><i>M'CARTHY v. CORK, &amp;c., Co.</i> -                                                                         | 356                     |
| <i>Anon.</i> (3 Dyer 323b) discussed.<br><i>CROMPTON v. JARRATT</i> -                                                                                |                         | <i>Bartlett v. Rees</i> (L. R. 12 Eq. 395, 40 L. J. Ch. 599, 25 L. T. 373, 19 W. R. 1046) followed.<br><i>SMITH v. OLDING</i> -                                      | 257                     |
| <i>Ansley v. Cotton</i> (16 L. J. Ch. 55) followed.<br><i>COCKERELL v. ESSEX</i> -                                                                   | 510                     | <i>Platt v. MENDEL</i> -                                                                                                                                             | 258                     |
| <i>Arrowsmith's Trusts, Re</i> (2 D. G. F. & J. 474, 9 W. R. 258) applied.<br><i>WILKS v. BANNISTER</i> -                                            | 511                     | <i>Bates v. Johnson</i> (Joh. 304, 313, 314) dictum of Wood, V.C., questioned.<br><i>WEST LONDON, &amp;c., BANK v. RELIANCE BUILDING SOCIETY</i> -                   | 260                     |
| <i>Ashbury Co. v. Riche</i> (L. R. 7 H. L. 653, 44 L. J. Ex. 185, 33 L. T. 450) explained.<br><i>WENLOCK v. RIVER DEE CO.</i> -                      | 115                     | <i>Batsford v. Kebbell</i> (3 Ves. 363) distinguished.<br><i>Re WREY</i> -                                                                                           | 520                     |
| <i>Att.-Gen. v. Kingston (Mayor)</i> (13 W. R. 888) discussed.<br><i>FLETCHER v. BEALEY</i> -                                                        | 275                     |                                                                                                                                                                      |                         |
| <i>Attree v. Howe</i> (9 Ch. D. 337, 47 L. J. Ch. 863) distinguished.<br><i>Re CHRISTMAS</i> -                                                       | 74                      |                                                                                                                                                                      |                         |

## TABLE OF CASES FOLLOWED, OVERRULED, ETC.

|                                                                                                               | Column<br>of<br>Digest. |                                                                                                                           | Column<br>of<br>Digest. |
|---------------------------------------------------------------------------------------------------------------|-------------------------|---------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Baynton v. Collins</i> (col. 179) followed.                                                                |                         | <i>Bolckow v. Fisher</i> (10 Q. B. D. 161, 52 L. J. Q. B. 12, 47 L. T. 724, 31 W. R. 235, 5 Asp. M. C. 20) distinguished. |                         |
| <i>Re THOMPSON AND CURZON</i> -                                                                               | 180                     | LONDON, TILBURY, & C., RY. CO. v. KIRK -                                                                                  | 330                     |
| <i>v. —</i> not followed.                                                                                     |                         | <i>Boulton, Ex parte</i> (1 D. G. & J. 163) discussed.                                                                    |                         |
| <i>Re ADAMES.</i>                                                                                             | 180                     | SOCIÉTÉ GÉNÉRALE v. TRAMWAYS UNION -                                                                                      | 96                      |
| <i>v. —</i> not followed.                                                                                     |                         | <i>Bowes v. Hope Mutual Insurance Society</i> (11 H. L. Cas. 396, 12 L. T. 680) distinguished.                            |                         |
| <i>Re TUCKER.</i>                                                                                             | 180                     | <i>Re UNITED STOCK EXCHANGE CO.</i>                                                                                       | 102                     |
| <i>Beavan v. Beavan</i> (24 Ch. D. 649, n., 52 L. J. Ch. 961, n., 49 L. T. 263, n., 32 W. R. 363 n.) applied. |                         | <i>Bowron &amp; Co., Re</i> (L. R. 3 Ch. 592, 37 L. J. Ch. 225, 19 L. T. 58, 16 W. R. 1093) distinguished                 | 81                      |
| <i>Re HOBSON</i> -                                                                                            | 12                      | <i>Boyce, Re</i> (4 D. G. & Sm. 205, 9 L. T. 670) followed.                                                               |                         |
| <i>Beavan v. Oxford (Earl)</i> (6 D. M. & G. 492) followed.                                                   |                         | <i>Re PHELPS</i> -                                                                                                        | 480                     |
| <i>BACON v. FORD</i> -                                                                                        | 200                     | <i>Boyes v. Cook</i> (14 Ch. D. 53, 49 L. J. Ch. 350, 42 L. T. 556, 28 W. R. 754) commented on.                           |                         |
| <i>Beckett v. Mid. Ry. Co.</i> (L. R. 3 C. P. 82, 17 L. T. 499) discussed.                                    |                         | <i>Re HERNANDO</i> -                                                                                                      | 298                     |
| <i>Re WADHAM AND N. E. RY. CO.</i> -                                                                          | 217                     | <i>Brady v. M'Argle</i> (14 L. R. Ir. 174, 15 Cox, C. C. 516) commented on.                                               |                         |
| <i>Bedford (Duke) v. British Museum</i> (2 My. & K. 552) explained.                                           |                         | <i>CALLAGHAN v. R. S. P. C. A.</i> -                                                                                      | 127                     |
| <i>SAYERS v. COLLYER</i> -                                                                                    | 120                     | <i>Briggs v. Sharp</i> (L. R. 20 Eq. 317) followed.                                                                       |                         |
| <i>Beeston v. Beeston</i> (45 L. J. Ex. 230) approved.                                                        |                         | <i>WELCH v. PETERBOROUGH</i> -                                                                                            | 9                       |
| <i>BRIDGER v. SAVAGE</i> -                                                                                    | 169                     | <i>Brook v. Badley</i> (L. R. 3 Ch. 672, 16 W. R. 947) followed.                                                          |                         |
| <i>Belcher v. Smith</i> (9 Bing. 82) distinguished.                                                           |                         | <i>Re WATTS</i> -                                                                                                         | 73                      |
| <i>THOMPSON v. WRIGHT</i> -                                                                                   | 198                     | <i>Brown v. Sewell</i> (16 Ch. D. 517, 44 L. T. 41) explained.                                                            |                         |
| <i>Belmonte v. Aynard</i> (4 C. P. D. 221, 352) distinguished.                                                |                         | <i>WICKSTEED v. BIGGS</i> -                                                                                               | 323                     |
| <i>TOMLINSON v. LAND, &amp; C., CORPORATION</i> -                                                             | 321                     | <i>Browne v. Savage</i> (4 Drew 635) discussed.                                                                           |                         |
| <i>Benns v. Mosley</i> (2 C. B. (N.S.) 116) followed.                                                         |                         | <i>NEWMAN v. NEWMAN</i> -                                                                                                 | 262                     |
| <i>WELDON v. NEAL</i> -                                                                                       | 172                     | <i>Brownlie v. Russell</i> (8 App. Cas. 235, 48 L. T. 881, 47 J. P. 757) distinguished.                                   |                         |
| <i>Beyer v. Adams</i> (26 L. J. Ch. 841) overruled.                                                           |                         | <i>NORTH BRITISH BUILDING SOCIETY v. WILLS</i> -                                                                          | 67                      |
| <i>BRIDGER v. SAVAGE</i> -                                                                                    | 169                     | <i>v. —</i> observed upon.                                                                                                |                         |
| <i>Bignold's Trusts, Re</i> (L. R. 7 Ch. 223, 26 L. T. 176) not followed.                                     |                         | <i>SCOTTISH PROPERTY INVESTMENT CO. v. BOYD</i> -                                                                         | 67                      |
| <i>Re PHELPS</i> -                                                                                            | 480                     | <i>Bullock v. Corry</i> (3 Q. B. D. 356, 47 L. J. Q. B. 352, 26 W. R. 330) followed.                                      |                         |
| <i>Birmingham Gas Light Co., Ex parte</i> (L. R. 11 Eq. 615) commented on.                                    |                         | <i>PEARCE v. FOSTER</i> -                                                                                                 | 327                     |
| <i>Ex parte HARRISON</i> -                                                                                    | 31                      | <i>Bunn, Re. Isaacson v. Webster</i> (16 Ch. D. 47, 29 W. R. 348) followed.                                               |                         |
| <i>Birt, in the Goods of</i> (L. R. 2 P. & D. 214, 40 L. J. P. 26, 19 W. R. 511) distinguished.               |                         | <i>SOOTNEY v. LOMER</i> -                                                                                                 | 297                     |
| <i>IN THE GOODS OF MALEN</i> -                                                                                | 367                     | <i>upon.</i>                                                                                                              |                         |
| <i>Blackburn Building Society, Re</i> (col. 66) followed.                                                     |                         | <i>Re WREY</i> -                                                                                                          | 520                     |
| <i>Re ALLIANCE SOCIETY</i> -                                                                                  | 89                      | <i>gushed.</i>                                                                                                            |                         |
| <i>Blackett v. Royal Exchange Assurance Co.</i> (2 C. & J. 244, 1 L. J. Ex. 101) followed.                    |                         | <i>Re MORRIS</i> -                                                                                                        | 513                     |
| <i>STEWART v. MERCHANTS' MARINE INSURANCE CO.</i> -                                                           | 196                     | <i>Bursill v. Tanner</i> (13 Q. B. D. 691, 50 L. T. 589, 32 W. R. 827) questioned.                                        |                         |
| <i>Blanchard, Re</i> (13 D. G. F. & J. 131, 137, G. W. R. 647) followed.                                      |                         | <i>TURNBULL v. FORMAN</i> -                                                                                               | 179                     |
| <i>Re LIGHTBODY'S TRUSTS</i> -                                                                                | 479                     | <i>Burstall v. Bryant</i> (12 Q. B. D. 103, 49 L. T. 712, 32 W. R. 495, 48 J. P. 119) (Semble) overruled.                 |                         |
| <i>Blease, Ex parte</i> (col. 23) not followed.                                                               |                         | <i>ROBINSON v. TUCKER</i> -                                                                                               | 338                     |
| <i>Ex parte SHEAD</i> -                                                                                       | 23                      |                                                                                                                           |                         |
| <i>Blyth &amp; Fanshawe, Re</i> (10 Q. B. D. 207, 52 L. J. Q. B. 186, 47 L. T. 610, 31 W. R. 283) applied.    |                         |                                                                                                                           |                         |
| <i>Re BROAD &amp; BROAD</i> -                                                                                 | 446                     |                                                                                                                           |                         |

# TABLE OF CASES FOLLOWED, OVERRULED, ETC.

lxi

|                                                                                                                           | Column<br>of<br>Digest. |                                                                                                          | Column<br>of<br>Digest. |
|---------------------------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Busk v. Aldam</i> (L. R. 19 Eq. 16, 44 L. J. Ch. 119) explained and distinguished.                                     |                         | <i>Clayton's Case</i> (1 Mer. 572) observed upon.                                                        |                         |
| <i>SCOTNEY v. LOMER</i> - - - - -                                                                                         | 297                     | <i>BROOKS v. BLACKBURN, &amp;c., BUILDING SOCIETY</i> - - - - -                                          | 62                      |
| <i>Caffarini v. Walker</i> (Ir. Rep. 9 C. L. 431, 10 C. L. 250) considered.                                               |                         | <i>Clowes v. Hilliard</i> (4 Ch. D. 413, 46 L. J. Ch. 271, 25 W. R. 224) distinguished.                  |                         |
| <i>NIELSEN v. WAIT</i> - - - - -                                                                                          | 432                     | <i>PEACOCK v. COLLING</i> - - - - -                                                                      | 153                     |
| <i>Caldecott, Ex parte</i> (4 Ch. D. 150) distinguished.                                                                  |                         | <i>Cockrill v. Sparkes</i> (1 H. & C. 699) distinguished.                                                |                         |
| <i>Re CAMPBELL</i> - - - - -                                                                                              | 44                      | <i>Re POWERS</i> - - - - -                                                                               | 230                     |
| <i>Caledonian Ry. Co. v. Walker's Trustees</i> (7 App. Cas. 259, 46 L. T. 826) discussed.                                 |                         | <i>Colonial Trusts Corporation, Re</i> (15 Ch. D. 465) distinguished.                                    |                         |
| <i>Re WADHAM &amp; N. E. RY.</i> - - - - -                                                                                | 217                     | <i>Re HORNE &amp; HELLARD</i> - - - - -                                                                  | 84                      |
| <i>Cullisher v. Bischoffsheim</i> (L. R. 5 Q. B. 449) followed.                                                           |                         | <i>Conolan v. Leyland</i> (Col. ) approved.                                                              |                         |
| <i>MILES v. NEW ZEALAND CO.</i> - - - - -                                                                                 | 90                      | <i>TURNBULL v. FORMAN</i> - - - - -                                                                      |                         |
| <i>Campbell, Ex parte; Re Cathcart</i> (L. R. 5, Ch. 703, 23 L. T. 282, 18 W. R. 1056) followed.                          |                         | <i>Cooke v. Chilcott</i> (3 Ch. D. 694) overruled.                                                       |                         |
| <i>BURSILL v. TANNER</i> - - - - -                                                                                        | 451                     | <i>ACSTERBERRY v. OLDHAM</i> - - - - -                                                                   | 121                     |
| <i>Canterbury (Archbishop) v. Robertson</i> (C. & M. 711) explained.                                                      |                         | <i>Cooper v. Whittingham</i> (15 Ch. D. 501, 49 L. J. Ch. 759) followed.                                 |                         |
| <i>In the goods of HARDING</i> - - - - -                                                                                  | 5                       | <i>HAYWARD v. E. LONDON WATERWORKS</i> - - - - -                                                         | 501                     |
| <i>Capital Fire Insurance Association, Re</i> (24 Ch. D. 408, 53 L. J. Ch. 71, 49 L. T. 697, 32 W. R. 260) observed upon. |                         | <i>Cope v. Cope</i> (1 Moo. & R. 269) discussed and followed.                                            |                         |
| <i>Re ANGLO-MALTESE DOCK CO.</i> - - - - -                                                                                | 450                     | <i>GLENISTER v. HARDING</i> - - - - -                                                                    | 147                     |
| <i>Cardinall v. Cardinall</i> (25 Ch. D. 772, 53 L. J. Ch. 636, 32 W. R. 411) commented on.                               |                         | <i>Corbett's Trusts, Re</i> (Johns. 591, 29 L. J. Ch. 458, 2 L. T. 147, 8 W. R. 257) followed.           |                         |
| <i>GARDNER v. JAY</i> - - - - -                                                                                           | 358                     | <i>Re MORTIMER</i> - - - - -                                                                             | 520                     |
| <i>Carver v. Bowles</i> (2 Russ. & My. 301) distinguished.                                                                |                         | <i>Cosser v. Collinge</i> (3 M. & K. 283) applied.                                                       |                         |
| <i>KING v. KING</i> - - - - -                                                                                             | 141                     | <i>BANK OF IRELAND v. BROOKFIELD CO.</i> - - - - -                                                       | 494                     |
| <i>Cassels v. Lamb</i> (12 C. of S. Cas. 722) affirmed.                                                                   |                         | <i>Cotton, Re</i> (1 Ch. D. 232) discussed.                                                              |                         |
| <i>SANDEMAN v. SCOTTISH PROPERTY, &amp;c., SOCIETY</i> - - - - -                                                          | 399                     | <i>Re DICKSON</i> - - - - -                                                                              | 190                     |
| <i>Chamberlain v. W. End, &amp;c., Co.</i> (2 B. & S. 605, 6 L. T. 318) discussed.                                        |                         | <i>Counsel v. Garvie</i> (Ir. R. 5 C. L. 74) considered.                                                 |                         |
| <i>Re WADHAM &amp; N. E. RY.</i> - - - - -                                                                                | 217                     | <i>LEA v. PARKER</i> - - - - -                                                                           | 118                     |
| <i>Chesterfield's Trusts, Re</i> (24 Ch. D. 643, 52 L. J. Ch. 958, 49 L. T. 261, 32 W. R. 361) applied.                   |                         | <i>Coverdale v. Charlton</i> (4 Q. B. D. 104, 48 L. J. Q. B. 128, 40 L. T. 88, 27 W. R. 258) considered. |                         |
| <i>Re HOBSON</i> - - - - -                                                                                                | 12                      | <i>WANDSWORTH BOARD v. UNITED TELEPHONE CO.</i> - - - - -                                                | 248                     |
| <i>Chinery, Ex parte</i> (12 Q. B. D. 342, 53 L. J. Ch. 662, 50 L. T. 342, 32 W. R. 469) explained.                       |                         | <i>Crawshaw v. Crawshaw</i> (14 Ch. D. 817) considered.                                                  |                         |
| <i>Ex parte MOORE</i> - - - - -                                                                                           | 20                      | <i>VANE v. RHODES</i> - - - - -                                                                          | 525                     |
| <i>Christie v. Inland Revenue Commissioners</i> (2 Ex. D. 46) distinguished.                                              |                         | <i>Cromack v. Heathcote</i> (2 B. & B. 4) overruled.                                                     |                         |
| <i>MACLEOD v. INLAND REVENUE COMMISSIONERS</i> - - - - -                                                                  | 390                     | <i>REG. v. COX</i> - - - - -                                                                             | 148                     |
| <i>Clark v. Brown</i> (2 Sm. & Giff. 524) not followed.                                                                   |                         | <i>Cross, Re</i> (1 H. & N. 651, 26 L. J. M. C. 28) discussed.                                           |                         |
| <i>MANTON v. TABOIS</i> - - - - -                                                                                         | 511                     | <i>CLARK v. REG.</i> - - - - -                                                                           | 482                     |
| <i>Clark v. Taylor</i> (1 Drew. 642, 1 W. R. 476) followed.                                                               |                         | <i>Crouch v. Waller</i> (4 D. G. & J. 302) distinguished.                                                |                         |
| <i>Re OVEY</i> - - - - -                                                                                                  | 71                      | <i>NICOL v. NICOL</i> - - - - -                                                                          | 184                     |
| <i>Class v. Marshall</i> (Col. 284) followed.                                                                             |                         | <i>Crowther v. Thorley</i> (50 L. T. 43, 33 W. R. 330, 48 J. P. 292) distinguished.                      |                         |
| <i>PAGE v. SLADE</i> - - - - -                                                                                            | 284                     | <i>Ex parte POPPLETON</i> - - - - -                                                                      | 98                      |
|                                                                                                                           |                         | <i>v. ——— followed.</i> - - - - -                                                                        |                         |
|                                                                                                                           |                         | <i>Re SIDDALL</i> - - - - -                                                                              | 98                      |
|                                                                                                                           |                         | <i>Culley, Ex parte</i> (9 Ch. D. 307) followed.                                                         |                         |
|                                                                                                                           |                         | <i>Ex parte DEARLE</i> - - - - -                                                                         | 36                      |
|                                                                                                                           |                         | <i>Cumber v. Wane</i> (1 Str. 426) followed.                                                             |                         |
|                                                                                                                           |                         | <i>FOAKES v. BEER</i> - - - - -                                                                          | 1                       |

|                                                                                                                   | Column<br>of<br>Digest. |                                                                                                                            | Column<br>of<br>Digest. |
|-------------------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Dalton v. Angus</i> (6 App. Cas. 740, 50 L. J. Q. B. 689, 44 L. T. 844, 30 W. R. 191) applied.                 |                         | <i>Eaton v. Basker</i> (7 Q. B. D. 529, 50 L. J. Q. B. 444) distinguished.                                                 |                         |
| <i>LATIMER v. OFFICIAL, &amp; C., SOCIETY</i>                                                                     | 457                     | <i>MELLISS v. SHIRLEY LOCAL BOARD</i>                                                                                      | 3                       |
| <i>Daughlish v. Tennent</i> (L. R. 2 Q. B. 49, 36 L. J. Q. B. 10, 15 W. R. 196) approved.                         |                         | <i>Edmundson, Re</i> (17 Q. B. 67) overruled.                                                                              |                         |
| <i>Ex parte MILNER</i> - - -                                                                                      | 26                      | <i>Reg. v. EDWARDS, &amp; C.</i> - - -                                                                                     | 2                       |
| <i>Davey v. L. &amp; S. W. Ry. Co.</i> (12 Q. B. D. 70, 53 L. J. Q. B. 58, 49 L. T. 739, 48 J. P. 279) discussed. |                         | <i>Elbinger Actien-Gesellschaft v. Armstrong</i> (L. R. 9, Q. B. 473) approved of.                                         |                         |
| <i>BROWN v. G. W. RY. CO.</i> - - -                                                                               | 271                     | <i>GRÉBERT-BORGNIS v. NUGENT</i> - - -                                                                                     | 1                       |
| <i>Davidson v. Kimpton</i> (18 Ch. D. 213, 45 L. T. 132, 29 W. R. 912) considered.                                |                         | <i>"Ella A. Clark," The</i> (Br. & Lush. 32, 8 L. T. 119, 11 W. R. 534) overruled.                                         | 4                       |
| <i>Re MORTIMER</i> - - -                                                                                          | 520                     | <i>THE "HEINRICH BJORN"</i> - - -                                                                                          | 4                       |
| <i>Davis v. Angel</i> (4 D. G. F. & J. 524, 31 Beav. 223, 21 L. J. Ch. 613, 10 W. R. 722) distinguished.          |                         | <i>Elliott v. Turquand</i> (7 App. Cas. 79, 51 L. J. P. C. 1, 45 L. T. 771) distinguished.                                 |                         |
| <i>PEACOCK v. COLLING</i> - - -                                                                                   | 153                     | <i>Ex parte REID</i> - - -                                                                                                 | -                       |
| <i>Dearle v. Hall</i> (3 Russ. 1) observed upon.                                                                  |                         | <i>Ellis v. Desilva</i> (6 Q. B. D. 521, 50 L. J. Q. B. 328) followed.                                                     |                         |
| <i>SOCIÉTÉ GÉNÉRALE DE PARIS v. TRAMWAYS UNION</i> - - -                                                          | 96                      | <i>HAWKE v. BREAR</i> - - -                                                                                                | 3                       |
| <i>De Cosse Brissac v. Rathbone</i> (6 Hurl. & N. 301, 30 L. J. Ex. 238) followed.                                |                         | <i>Emperor v. Rolfe</i> (1 Ves. Sen. 208) applied.                                                                         |                         |
| <i>VOINET v. BARRETT</i> - - -                                                                                    | 166                     | <i>WAKEFIELD v. MAFFET</i> - - -                                                                                           | 4                       |
| <i>Denston v. Ashton</i> (L. R. 4, Q. B. 590, 38 L. J. Q. B. 254, 21 L. T. 20, 17 W. R. 968) questioned.          |                         | <i>"Empress Eugénie," The</i> (Lush. 140) overruled.                                                                       |                         |
| <i>POOLEY'S TRUSTEE v. WHETHAM</i>                                                                                | 322                     | <i>THE "FRIEDEBERG"</i> - - -                                                                                              | 3                       |
| ----- <i>v. -----</i> approved.                                                                                   |                         | <i>England v. Marsden</i> (L. R. I. C. P. 529, 35 L. J. C. P. 259) questioned.                                             |                         |
| <i>COWELL v. TAYLOR</i> - - -                                                                                     | 322                     | <i>EDMONDS v. WALLINGFORD</i> - - -                                                                                        | -                       |
| <i>Dillon v. Cunningham</i> (L. R. 8 Ex. 23) distinguished.                                                       |                         | <i>English Joint Stock Bank, Re</i> (L. R. 3 Eq. 203, 209) considered.                                                     |                         |
| <i>MEAGER v. PELLEW</i> - - -                                                                                     | 15                      | <i>CREDIT CO. v. WEBSTER</i> - - -                                                                                         | 1                       |
| <i>Dillon v. Reilly</i> (1 R. 10 Eq. 152) distinguished.                                                          |                         | <i>Enopin v. Wylie</i> (10 H. L. C. 13) dissented from.                                                                    |                         |
| <i>DOBBIAN v. GILMORE</i> - - -                                                                                   | 524                     | <i>EWING v. ORR-EWING</i> - - -                                                                                            | 3                       |
| <i>Dixon &amp; Wilson, Re</i> (13 Q. B. D. 118, 53 L. J. Ch. 769, 50 L. T. 414, 32 W. R. 837) observed upon.      |                         | <i>Erlanger v. New Sombbrero, &amp; C. Co.</i> (3 App. Cas. 1218, 48 L. J. Ch. 73, 39 L. T. 269, 27 W. R. 65) discussed.   |                         |
| <i>Ex parte ORAM</i> - - -                                                                                        | 35                      | <i>Re CAPE BRETON CO.</i> - - -                                                                                            | -                       |
| <i>Doe v. Harris</i> (5 C. & P. 592) overruled.                                                                   |                         | <i>Erskine v. Gartshore</i> (18 Ves. 114) followed.                                                                        |                         |
| <i>REG. v. COX</i> - - -                                                                                          | 148                     | <i>Re MILLER &amp; MILLER</i> - - -                                                                                        | 4                       |
| <i>Doherty v. Kelley</i> (13 Ir. L. T. R. 59) approved of.                                                        |                         | <i>Evans v. Carrington</i> (2 D. F. & J. 481) observed upon.                                                               |                         |
| <i>CRISFORD v. DODD</i> - - -                                                                                     | 343                     | <i>FEARON v. AYLESFORD</i> - - -                                                                                           | 1                       |
| <i>Dudson's Contract, Re</i> (8 Ch. D. 628, 47 L. J. Ch. 632, 39 L. T. 182, 27 W. R. 179) applied.                |                         | <i>Everitt v. Everitt</i> (L. R. 10 Eq. 405, 39 L. J. Ch. 777) followed.                                                   |                         |
| <i>Re AINSLIE. AINSLIE v. AINSLIE</i>                                                                             | 459                     | <i>JAMES v. COUCHMAN</i> - - -                                                                                             | 4                       |
| <i>Dundonald v. Masterman</i> (L. R. 7 Eq. 504, 38 L. J. Ch. 350, 20 L. T. 271, 17 W. R. 548) considered.         |                         | <i>Evers v. Challis</i> (7 H. L. C. 531) explained.                                                                        |                         |
| <i>CLEATHER v. TWISDEN</i> - - -                                                                                  | 285                     | <i>WATSON v. YOUNG</i> - - -                                                                                               | 1                       |
| <i>Dysart's Case</i> (6 App. Cas. 507) Rule followed.                                                             |                         | <i>Evershed v. L. &amp; N. W. Ry. Co.</i> (3 App. Cas. 1029, 48 L. J. Q. B. 22, 39 L. T. 306, 26 W. R. 863) observed upon. |                         |
| <i>LAUDERDALE PEERAGE</i> - - -                                                                                   | 290                     | <i>MURRAY v. GLASGOW RY. CO.</i> - - -                                                                                     | 1                       |
| <i>Eastwood v. Millar</i> (L. R. 9 Q. B. 440, 43 L. J. M. C. 139) distinguished.                                  |                         | <i>Ewer v. Hayden</i> (Cro. Eliz. 476, 658) followed.                                                                      |                         |
| <i>SNOW v. HILL</i> - - -                                                                                         | 169                     | <i>Re PORTAL &amp; LAMB</i> - - -                                                                                          | 1                       |
|                                                                                                                   |                         | <i>Farrow v. Austin</i> (18 Ch. D. 58, 45 L. T. 227) followed.                                                             |                         |
|                                                                                                                   |                         | <i>Re MCCLELLAN</i> - - -                                                                                                  | 1                       |
|                                                                                                                   |                         | <i>Fearnside v. Flint</i> (22 Ch. D. 579, 52 L. J. Ch. 479, 48 L. T. 154, 31 W. R. 318) distinguished.                     |                         |
|                                                                                                                   |                         | <i>Re POWERS</i> - - -                                                                                                     | 1                       |



TABLE OF CASES FOLLOWED, OVERRULED, ETC.

lxiii

|                                                                                                                           | Column<br>of<br>Digest. |                                                                                                                                  | Column<br>of<br>Digest. |
|---------------------------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Ferrier v. Jay</i> (L. R. 10, Eq. 550, 39 L. J. Ch. 121) explained and distinguished.                                  |                         | <i>General Steam Navigation Co. v. Guillon</i> (11 M. & W. 877, 13 L. J. Ex. 168 dictum dissented from.                          |                         |
| <i>SOOTNEY v. LOMER</i> - - -                                                                                             | 297                     | <i>VOINET v. BARRETT</i> - - -                                                                                                   | 166                     |
| <i>Field, Re</i> (col. 442) followed.                                                                                     |                         | <i>George, Re</i> (5 Ch. D. 837) discussed.                                                                                      |                         |
| <i>FLEMING v. HARDCASTLE</i> - - -                                                                                        | 442                     | <i>Re DICKSON</i> - - -                                                                                                          | 190                     |
| <i>Fisk v. Att.-Gen.</i> (L. R. 4, Eq. 521, 15 W. R. 1200) followed.                                                      |                         | <i>Gibbins v. Buckland</i> (1 Hurl. & C. 736, 32 L. J. Ex. 156) followed.                                                        |                         |
| <i>Re OVEY</i> - - -                                                                                                      | 71                      | <i>KNIGHT v. CLARKE</i> - - -                                                                                                    | 209                     |
| <i>Fitzwater v. Waterhouse</i> (52 L. J. Ch. 83) followed.                                                                |                         | <i>Glenny v. Hartley Re</i> (25 Ch. D. 611, 53 L. J. Ch. 417, 50 L. T. 59, 32 W. R. 457) commented on, and dicta dissented from. |                         |
| <i>GARDNER v. TAPLING</i> - - -                                                                                           | 343                     | <i>Re NORRIS</i> - - -                                                                                                           | 472                     |
| <i>Florence Land, &amp;c. Co., Re</i> (10 Ch. D. 530) distinguished.                                                      |                         | <i>Godfrey v. Faulkner</i> (23 Ch. D. 483, 52 L. J. Ch. 820, 48 L. T. 853, 32 W. R. 23, 47 J. P. 676) applied.                   |                         |
| <i>Re HORNE &amp; HELLARD</i> - - -                                                                                       | 84                      | <i>OXLEY v. SCARTH</i> - - -                                                                                                     | 477                     |
| <i>Foligno v. Martin</i> (6 Beav. 586, 22 L. J. Ch. 502) explained and followed.                                          |                         | <i>Gordon Re</i> , (6 Ch. D. 531) distinguished.                                                                                 |                         |
| <i>HUTCHINGS v. HUMPHREYS</i> - - -                                                                                       | 206                     | <i>FOXWELL v. LEWIS</i> - - -                                                                                                    | 139                     |
| <i>Follett v. Jefferys</i> (1 Sim. (N.S.) 1) approved.                                                                    |                         | <i>Gordon v. Grant</i> (13 C. of S. Cas.; 2nd Ser. 1) examined.                                                                  |                         |
| <i>REG. v. COX</i> - - -                                                                                                  | 148                     | <i>LAUDERDALE PEERAGE</i> - - -                                                                                                  | 290                     |
| <i>Ford v. Hart</i> (L. R. 9 C. P. 273, 22 W. R. 153) followed.                                                           |                         | <i>Gothenburg Commercial Co. Re</i> (44 L. T. 166, 29 W. R. 358) approved and followed.                                          |                         |
| <i>FORD v. ELMSLEY</i> - - -                                                                                              | 281                     | <i>Ex parte NECK</i> - - -                                                                                                       | 49                      |
| <i>Fourth City, &amp;c. Building Society v. Williams</i> (14 Ch. D. 140—147) discussed.                                   |                         | <i>Gowan v. Broughton</i> (L. R. 19, Eq. 77) distinguished.                                                                      |                         |
| <i>SANGSTER v. COCHRANE</i> - - -                                                                                         | 64                      | <i>HURST v. HURST</i> - - -                                                                                                      | 152                     |
| " <i>Franconia</i> ," <i>The</i> (3 P. D. 164) explained.                                                                 |                         | <i>Grave v. Salisbury</i> (3 Bro. C. C. 425) observed upon.                                                                      |                         |
| <i>The "PALERMO"</i> - - -                                                                                                | 434                     | <i>TURNER v. TURNER</i> - - -                                                                                                    | 8                       |
| " <i>Franconia</i> ," <i>The</i> (2 P. D. 163, 46 L. J. P. 33, 36 L. T. 640, 25 W. R. 796) overruled.                     |                         | <i>Great Western Ry. Co. v. Sutton</i> (L. R. 4, H. L. 226) followed.                                                            |                         |
| <i>SEWARD v. "VERA CRUZ"</i> - - -                                                                                        | 202                     | <i>M. S. &amp; L. R. Co. v. DENABY &amp; Co.</i> - - -                                                                           | 383                     |
| <i>Fraser v. Berkeley</i> (7 C. & P. 621) disapproved of.                                                                 |                         | <i>Green v. Low</i> (22 Beav. 625) distinguished.                                                                                |                         |
| <i>KEISER v. SMITH</i> - - -                                                                                              | 16                      | <i>Re ADAMS AND KENSINGTON VESTRY</i> - - -                                                                                      | 212                     |
| <i>French v. Chichester</i> (2 Vern. 568, 3 Bro. P. C. 2nd. Ed. p. 16) discussed and explained.                           |                         | <i>Gribble v. Buchanan</i> (18 C. B. 691, 26 L. J. C. P. 24) not followed.                                                       |                         |
| <i>TROTT v. BUCHANAN</i> - - -                                                                                            | 157                     | <i>HAWKE v. BREAR</i> - - -                                                                                                      | 320                     |
| <i>Frith v. Forbes</i> (4 D. F. & J. 409, 7 L. T. 261, 32 L. J. Ch. 10, 11 W. R. 4) distinguished.                        |                         | <i>Griffenhoofe v. Daubuz</i> (25 L. J. Q. B. 237) explained.                                                                    |                         |
| <i>Ex part DEVERS</i> - - -                                                                                               | 50                      | <i>EDMONDS v. WALLINGFORD</i> - - -                                                                                              | 4                       |
| <i>— v. —</i> discussed.                                                                                                  |                         | <i>Grundy v. Grice</i> (Seton, 4th Edit. vol. ii. p. 1036) form of judgment modified.                                            |                         |
| <i>PHELPS v. COMBER</i> - - -                                                                                             | 51                      | <i>HUNTER v. MYATT</i> - - -                                                                                                     | 256                     |
| <i>Frodsham v. Frodsham</i> (15 Ch. D. 317) distinguished.                                                                |                         | <i>Gully v. Davis</i> (L. R. 10 Eq. 562) distinguished.                                                                          |                         |
| <i>Re TWEEDY</i> - - -                                                                                                    | 481                     | <i>BUTLER v. BUTLER</i> - - -                                                                                                    | 517                     |
| <i>Gale, Re</i> (22 Ch. D. 820, 53 L. J. Ch. 694, 48 L. T. 101, 31 W. R. 538) considered                                  |                         | <i>Haigh v. Ousey</i> (7 E. & B. 578, 29 L. T. (O.S.) 89), dicta followed.                                                       |                         |
| <i>Re MARSDEN.</i> - - -                                                                                                  | 229                     | <i>BLAKE v. HUMMELL</i> - - -                                                                                                    | 443                     |
| <i>Gartside v. Outram</i> (26 L. J. Ch. 113) approved.                                                                    |                         | <i>Hamer v. Sharp</i> (L. R. 19 Eq. 108, 31 L. T. 643) distinguished.                                                            |                         |
| <i>REG. v. COX</i> - - -                                                                                                  | 148                     | <i>SAUNDERS v. DENCE</i> - - -                                                                                                   | 365                     |
| <i>Geils v. Geils</i> (17 C. of S. Cas.; 2nd Ser. 379) examined.                                                          |                         | <i>Hammersmith Ry. Co. v. Brand</i> (L. R. 4, H. L. 171, 38 L. J. Q. B. 263, 21 L. T. 238, 18 W. R. 12) distinguished.           |                         |
| <i>LAUDERDALE PEERAGE</i> - - -                                                                                           | 290                     | <i>TRUMAN v. L. B. &amp; S. C. Ry. Co.</i> - - -                                                                                 | 276                     |
| <i>General Credit &amp; Discount Co. v. Glegg</i> (22 Ch. D. 549, 52 L. J. Ch. 297, 48 L. T. 182, 31 W. R. 421) followed. |                         |                                                                                                                                  |                         |
| <i>SMITH v. OEDING</i> - - -                                                                                              | 257                     |                                                                                                                                  |                         |

|                                                     | Column<br>of<br>Digest. |                                                         | Column<br>of<br>Digest. |
|-----------------------------------------------------|-------------------------|---------------------------------------------------------|-------------------------|
| <i>Hampden v. Wallis</i> (col. 815) followed.       |                         | <i>Hopkinson v. Rolt</i> followed.                      |                         |
| Re WIGGESTON HOSPITAL -                             | 344                     | MILES v. NEW ZEALAND, & C. Co. -                        | 90                      |
| <i>Harman v. Johnson</i> (2 E. & B. 61) con-        |                         | <i>Hopper, Re</i> , (L. R. 2 Q. B. 367) explained       |                         |
| sidered.                                            |                         | and distinguished.                                      |                         |
| CLEATHER v. TWISDEN -                               | 285                     | Re DAWDY -                                              | 13                      |
| <i>Harris, Re</i> (15 Ch. D. 561) observations of   |                         | <i>Hopton v. Dryden</i> (Prec. in Ch. 179) followed.    |                         |
| Jessel, M.R., explained.                            |                         | Re COMPTON -                                            | 158                     |
| Re WATTS -                                          | 73                      | <i>Horbury Bridge, &amp;c. Co.</i> (11 Ch. D. 109, 114, |                         |
| ----- distinguished.                                |                         | 48 L. J. Ch. 341, 40 L. T. 353, 354)                    |                         |
| Re CHRISTMAS -                                      | 74                      | dicta observed upon:                                    |                         |
| <i>Harrison, Re</i> (10 Beav. 5) observed upon.     |                         | Re CHILLINGTON IRON Co. -                               | 99                      |
| Re BOYCOTT -                                        |                         | <i>Hudson v. Revett</i> (5 Bing. 368) distinguished     |                         |
| <i>Harrison v. Carter</i> (2 C. P. D. 26) followed. |                         | SOCIÉTÉ GÉNÉRALE DE PARIS v.                            |                         |
| BAKER v. MONMOUTH TOWN CLERK -                      | 278                     | TRAMWAYS UNION -                                        | 96                      |
| <i>Hasker, Ex parte</i> (col. 319) distinguished.   |                         | <i>Hulse v. Hulse</i> (17 C. B. 711) disapproved of     |                         |
| Ex parte DUDLEY -                                   | 316                     | MILLER v. MCKENZIE -                                    | 48                      |
| <i>Havelock v. Havelock</i> (17 Ch. D. 807, 50 L.   |                         | <i>Humble v. Shore</i> (7 Hare 247, 1 H. & M.           |                         |
| J. Ch. 778, 44 L. T. 168, 29 W. R.                  |                         | 550n.) considered.                                      |                         |
| 859) discussed and disapproved of.                  |                         | LANE v. RHODES. -                                       | 525                     |
| KEMMIS v. KEMMIS -                                  | 189                     | <i>Hunter v. Nockolds</i> (1 Mac. & Gor. 640) fol-      |                         |
| <i>Hawkins v. Chappel</i> (1 Atk. 621) followed.    |                         | lowed.                                                  |                         |
| WELCH v. PETERBOROUGH -                             | 9                       | DARLEY v. TENNANT -                                     | 227                     |
| <i>Heath v. Nugent</i> (29 Beav. 226) followed.     |                         | <i>Hutchinson v. Copestake</i> (9 C. B. (N.S.) 863      |                         |
| Re WILKINS -                                        | 154                     | NEWSON v. PENDER -                                      | 227                     |
| <i>Heaven v. Pender</i> (52 L. J. Q. B. 702) dis-   |                         | <i>Hyde v. Warden</i> 3 Ex. D. 72, distinguished        |                         |
| tinguished.                                         |                         | BANK OF IRELAND v. BROOKFIELD                           |                         |
| ELLIOTT v. HALL -                                   | 272                     | Co. -                                                   | 494                     |
| <i>Henty v. Schröder</i> (12 Ch. D. 666, 48 L. J.   |                         | <i>Jablochhoff Electric Light Co., Re</i> (49 L. T.     |                         |
| Ch. 792, 27 W. R. 833) explained                    |                         | 566, 32 W. R. 168, W. N. 1883 p.                        |                         |
| and followed.                                       |                         | 189) distinguished.                                     |                         |
| HUTCHINGS v. HUMPHREYS -                            | 206                     | Re NACUPAI GOLD MINING Co. -                            | 100                     |
| <i>Hetherington v. Groome</i> (13 Q. B. D. 789,     |                         | <i>Jackson, Re</i> (L. R. 12 Eq. 354) discussed.        |                         |
| 53 L. J. Q. B. 576, 51 L. T. 412,                   |                         | SOCIÉTÉ GÉNÉRALE DE PARIS v.                            |                         |
| 33 W. R. 103) followed.                             |                         | TRAMWAYS UNION -                                        | 96                      |
| SIBLEY v. HIGGS -                                   | 54                      | <i>Jackson v. Litchfield</i> (8 Q. B. D. 474) followed. |                         |
| <i>Higginson v. Hall</i> (10 Ch. D. 235) dissented  |                         | ADAM v. TOWNEND. -                                      | 340                     |
| from.                                               |                         | <i>Jervis v. Lawrence</i> (L. R. 8 Eq. 345) ques-       |                         |
| DYKE v. STEPHENS -                                  | 326                     | tioned.                                                 |                         |
| <i>Hill, Ex parte</i> (6 Ch. D. 63) commented on.   |                         | Re APPLETON. -                                          | 524                     |
| Ex parte HARRISON -                                 | 31                      | <i>Jervis v. Lawrence</i> (22 Ch. D. 202, 52 L. J.      |                         |
| <i>Hoare v. G. W. Ry. Co.</i> , (37 L. T. 186) dis- |                         | Ch. 242, 47 L. T. 428, 31 W. R.                         |                         |
| tinguished.                                         |                         | 267) not followed.                                      |                         |
| STEVENS v. G. W. RY. Co. -                          | 381                     | Re CHRISTMAS -                                          | 74                      |
| <i>Hodgson v. Railway Passengers Assurance</i>      |                         | <i>Jones v. Monte Video Gas Co.</i> (5 Q. B. D.         |                         |
| Co. (9 Q. B. D. 188) commented on                   |                         | 556, 42 L. T. 639) explained.                           |                         |
| and explained.                                      |                         | HALL v. TRUMAN -                                        | 325                     |
| FOX v. RY. PASSENGERS ASSURANCE                     |                         | <i>Joseph v. Lyons</i> (col. 55) followed.              |                         |
| Co. -                                               | 356                     | HALLAS v. ROBINSON -                                    | 55                      |
| <i>Hollier v. Laurie</i> (3 C. B. 334) discussed.   |                         | <i>Kearsley v. Phillips</i> (10 Q. B. D. 465) dis-      |                         |
| SMITH v. CRITCHFIELD -                              | 420                     | tinguished.                                             |                         |
| <i>Holmes v. Buckley</i> (1 Eq. c. ab. 27) dis-     |                         | LONDON AND YORKS. BANK v.                               |                         |
| cussed.                                             |                         | COOPER -                                                | 326                     |
| AUSTERBERRY v. OLDHAM -                             | 121                     | <i>Keighley's Case</i> (10 Rep. 139) followed.          |                         |
| <i>Honiball v. Bloomer</i> (10 Ex. 538) questioned. |                         | REG. v. COMMISSIONERS OF SEWERS                         |                         |
| PARNELL v. MORT -                                   | 286                     | FOR ESSEX -                                             | 419                     |
| <i>Hope v. Hope</i> (4 D. G. M. & G. 328) con-      |                         | <i>Kenmare v. Casey</i> (18 Ir. L. T. R. 77) fol-       |                         |
| sidered.                                            |                         | lowed.                                                  |                         |
| Re WILLOUGHBY -                                     | 189                     | BEATTY v. LEACY -                                       | 350                     |
| <i>Hopkinson v. Rolt</i> (9 H. L. Cas. 514, 5 L. T. |                         | <i>Kennedy v. Brown</i> (13 C. B. (N.S.) 677, com-      |                         |
| 90, 9 W. R. 900) applied.                           |                         | mented upon.                                            |                         |
| BRADFORD BANK v. BRIGGS -                           | 261                     | REG. v. DOUTRE -                                        | 76                      |

## TABLE OF CASES FOLLOWED, OVERRULED, ETC.

lxv

|                                                                                                           | Column<br>of<br>Digest. |                                                                                                             | Column<br>of<br>Digest. |
|-----------------------------------------------------------------------------------------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Kensey v. Langham</i> (Cas. t. Tal. 143) discussed.                                                    |                         | <i>Lightfoot v. Burstall</i> (1 H. & M. 546) considered.                                                    |                         |
| CROMPTON v. JARRATT - - -                                                                                 | 10                      | LANE v. RHOADES - - -                                                                                       | 525                     |
| <i>Kibble Exp.</i> (L. R. 10 Ch. 373, 23 W. R. 433) discussed.                                            |                         | <i>Littledale, Exp.</i> (6 D. G. M. & G. 714) discussed.                                                    |                         |
| <i>Ex parte</i> LENNOX - - -                                                                              | 41                      | SOCIÉTÉ GÉNÉRALE DE PARIS, v. TRAMWAYS UNION - - -                                                          | 96                      |
| <i>Kibble v. Gough</i> (38 L. T. 204) followed.                                                           |                         | <i>Lloyd v. Banks</i> (L. R. 3 Ch. 488, 37 L. J. Ch. 881) observed upon.                                    |                         |
| PAGE v. MORGAN - - -                                                                                      | 392                     | ARDEN v. ARDEN - - -                                                                                        | 265                     |
| <i>Kirk v. Eddowes</i> (3 Ha. 509) followed,                                                              |                         | <i>Lloyd v. Lloyd</i> (L. R. 2 Eq. 722) distinguished.                                                      |                         |
| TURNER v. TURNER - - -                                                                                    | 8                       | ROBERTSON v. RICHARDSON - - -                                                                               | 415                     |
| <i>Knapp v. Williams</i> (4 Ves. 430 n.) followed.                                                        |                         | <i>Loane v. Casey</i> (2 W. Black. 965) followed.                                                           |                         |
| Re CHRISTMAS - - -                                                                                        | 74                      | Re COMPTON - - -                                                                                            | 158                     |
| <i>Krehl v. Burrell</i> (7 Ch. D. 551, 47 L. J. Ch. 353, 38 L. T. 407) considered.                        |                         | <i>London and N. Western Ry. Co. v. Evershed</i> (3 App. Cas. 1029) followed.                               |                         |
| HOLLAND v. WORLEY - - -                                                                                   | 226                     | M. S. & L. Ry. Co. v. DENABY, &c., Co. - - -                                                                | 383                     |
| <i>Labouchere v. Dawson</i> (L. R. 13 Eq. 322, 41 L. J. Ch. 427, 25 L. T. 894, 20 W. R. 309) disapproved. |                         | <i>London and S. W. Ry. Co. v. Flower</i> (1 C. P. D. 77, 33 L. T. 687) approved.                           |                         |
| PEARSON v. PEARSON - - -                                                                                  | 171                     | HUGGALL v. M'LEAN - - -                                                                                     | 215                     |
| <i>Lacey, Re</i> (25 Ch. D. 301, 53 L. J. Ch. 287, 49 L. T. 755, 32 W. R. 233) followed.                  |                         | <i>Long v. Watkinson</i> (17 Beav. 471, 19 L. T. (O. S.) 309) followed.                                     |                         |
| Re DENNE - - -                                                                                            | 441                     | CLAY v. CLAY - - -                                                                                          | 513                     |
| ----- followed.                                                                                           |                         | <i>Longbottom v. Berry</i> (L. R. 5 Q. B. 123) approved.                                                    |                         |
| Re FIELD - - -                                                                                            | 442                     | SHEFFIELD, &c., SOCIETY v. HARRISON - - -                                                                   | 164                     |
| ----- observed upon.                                                                                      |                         | <i>Lovering, Ex parte</i> (L. R. 17 Eq. 452, 43 L. J. B. K. 58) distinguished.                              |                         |
| Re BOYCOTT - - -                                                                                          | 444                     | <i>Ex parte</i> CROSTHWAITE - - -                                                                           | 421                     |
| FLEMING v. HARDCASTLE - - -                                                                               | 442                     | <i>Lowestoft, &amp;c., Tramways Co., Re</i> (6 Ch. D. 484) observed upon.                                   |                         |
| <i>Laing v. Reed</i> (L. R. 5 Ch. 8, 18 W. R. 76) dictum overruled.                                       |                         | Re BIRMINGHAM, &c., Ry. Co. - - -                                                                           | 375                     |
| MURRAY v. SCOTT - - -                                                                                     | 61                      | <i>Lucena v. Lucena</i> (7 Ch. D. 255, 37 L. T. 420) distinguished.                                         |                         |
| <i>Laird v. Briggs</i> (19 Ch. D. 22, 43 L. T. 632) not followed.                                         |                         | Re BENN - - -                                                                                               | 519                     |
| SYMONS v. LEAKER - - -                                                                                    | 364                     | <i>Lynn v. Kerridge</i> (West's Rep. temp. Hardwicke, 172) followed.                                        |                         |
| <i>Lamb v. Walker</i> (3 Q. B. D. 389, 47 L. J. Q. B. 451, 38 L. T. 643, 26 W. R. 775) overruled.         |                         | HART v. HERNANDEZ - - -                                                                                     | 515                     |
| MITCHELL v. DARLEY MAIN CO. - - -                                                                         | 130                     | <i>Macdonald v. Union Bank</i> (2 C. of S. Cas. 3rd Ser. 963) examined.                                     |                         |
| <i>Landowner's W. of England, &amp;c., Co., Ashford</i> (33 W. R. 41) followed.                           |                         | LAUDERDALE PEERAGE - - -                                                                                    | 290                     |
| Re LONDON WHARF &c., Co. - - -                                                                            | 198                     | <i>McHenry v. Lewis</i> (22 Ch. D. 397, 52 L. J. Ch. 325, 47 L. T. 549, 31 W. R. 305) approved and applied. |                         |
| <i>Large's case</i> (2 Leon. 82, 3 Leon. 182) explained.                                                  |                         | THE "CHRISTIANSBORG" - - -                                                                                  | 308                     |
| Re ROSHER - - -                                                                                           | 505                     | <i>McIntosh v. Sinclair</i> (I. R. Rep. 456) considered.                                                    |                         |
| <i>Lees v. Lees</i> (1 R. 5 Eq. 549) distinguished.                                                       |                         | NIELSEN v. WAIT - - -                                                                                       | 432                     |
| MILLER v. GULSON - - -                                                                                    | 411                     | <i>Macleay, Re</i> (L. R. 20, Eq. 186, 44 L. J. Ch. 441, 32 L. T. 682, 23 W. R. 718) commented on.          |                         |
| " <i>Legatus</i> ," <i>The</i> (Swa 168) doubted.                                                         |                         | Re ROSHER - - -                                                                                             | 505                     |
| THE "BRITISH COMMERCE" - - -                                                                              | 427                     | <i>McMurray v. Spicer</i> (L. R. 5, Eq. 527) considered.                                                    |                         |
| <i>Lemann's Trusts, Re</i> (22 Ch. Div. 663, 52 L. J. Ch. 560, 48 L. T. 389, 31 W. R. 520) not followed.  |                         | Re GREENWOOD'S TRUSTS - - -                                                                                 | 480                     |
| Re PHELPS - - -                                                                                           | 480                     | <i>Maden v. Taylor</i> (45 L. J. Ch. 569) considered.                                                       |                         |
| <i>Lewis v. Allenby</i> (L. R. 10 Eq. 668, 18 W. R. 1127) distinguished.                                  |                         | Re MORTIMER - - -                                                                                           | 520                     |
| HUSBAND v. MARTIN - - -                                                                                   | 73                      |                                                                                                             |                         |
| <i>Lickbarrow v. Mason</i> (1 Sm. L. C., 8th Ed., 753) discussed and explained.                           |                         |                                                                                                             |                         |
| SEWELL v. BURDICK - - -                                                                                   | 423                     |                                                                                                             |                         |

|                                                                                              | Column<br>of<br>Digest. |                                                                                                                             | Column<br>of<br>Digest. |
|----------------------------------------------------------------------------------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Mahon v. Davoren</i> (2 H. & B. 523) distinguished.                                       |                         | <i>New London and Brazilian Bank v. Brocklebank</i> (21 Ch. D. 302, 51 L. J. Ch. 711) dictum of Jessel, M.R., not followed. |                         |
| <i>Re GREEN'S ESTATE</i> - - -                                                               | 230                     | <i>MILES v. NEW ZEALAND, &amp; C. Co.</i> - - -                                                                             | 90                      |
| <i>Makin v. Watkinson</i> (L. R. 6 Ex. 25, 23 L. T. 592, 19 W. R. 286) approved.             |                         | <i>New Zealand and Australian Land Co. v. Watson</i> (7 Q. B. D. 374) distinguished and explained.                          |                         |
| <i>HUGGALL v. MCLEAN</i> - - -                                                               | 215                     | <i>KALTENBACH v. LEWIS</i> - - -                                                                                            | 161                     |
| <i>Malcolm v. Charlesworth</i> (1 Kay, 63) approved and followed.                            |                         | <i>Nichols, Ex parte</i> (22 Ch. D. 782) distinguished.                                                                     |                         |
| <i>ARDEN v. ARDEN</i> - - -                                                                  | 265                     | <i>Ex parte Moss</i> - - -                                                                                                  | 45                      |
| <i>Marshall v. Marshall</i> (5 P. D. 19, 48 L. J. P. 49) approved.                           |                         | <i>Nicklin v. Williams</i> (10 Ex. 259, 23 L. J. Ex. 335) discussed.                                                        |                         |
| <i>CLARK v. CLARK</i> - - -                                                                  | 181                     | <i>MITCHELL v. DARLEY MAIN Co.</i> - - -                                                                                    | 130                     |
| <i>Marson v. Cox</i> (14 Ch. D. 140-147) - - -                                               | 64                      | <i>Nordon v. Defries</i> (8 Q. B. D. 508, 51 L. J. Q. B. 415) not followed.                                                 |                         |
| <i>Martin v. Lee</i> (14 Moore, P. C. 42) explained.                                         |                         | <i>RAWSTORNE v. PRESTON</i> - - -                                                                                           | 327                     |
| <i>McGIBBON v. ABBOTT</i> - - -                                                              | 77                      | <i>Norris v. Norris</i> (4 Sw. & Tr. 237, 30 L. J. P. & M. 111) distinguished.                                              |                         |
| <i>Martin v. Sedgwick</i> (9 Beav. 333) dissented from.                                      |                         | <i>POMERO v. POMERO</i> - - -                                                                                               | 177                     |
| <i>SOCIÉTÉ GÉNÉRALE DE PARIS v. TRAMWAYS UNION</i> - - -                                     | 96                      | <i>Northern Counties Insurance Co. v. Whipp</i> (col. 262) followed.                                                        |                         |
| <i>May, Ex parte</i> (13 Q. B. D. 552, 53 L. J. Q. B. 571) followed.                         |                         | <i>MANNERS v. MEW</i> - - -                                                                                                 | 263                     |
| <i>Re WEAVER</i> - - -                                                                       | 22                      |                                                                                                                             |                         |
| <i>Megson v. Hindle</i> (15 Ch. D. 198) distinguished.                                       |                         |                                                                                                                             |                         |
| <i>Re BYRON</i> - - -                                                                        | 507                     |                                                                                                                             |                         |
| <i>Mette's Estate, Re</i> (L. R. 7 Eq. 72) followed.                                         |                         | <i>Oddie v. Brown</i> (4 D. G. & J. 179) distinguished.                                                                     |                         |
| <i>COTTRELL v. COTTRELL</i> - - -                                                            | 405                     | <i>SMITH v. CUNINGHAME</i> - - -                                                                                            | 3                       |
| <i>Miner v. Gilmour</i> (12 Moo. P. C. 131, 7 W. R. 328) approved.                           |                         | <i>Oldham v. Stringer</i> (col. 255) not followed.                                                                          |                         |
| <i>COMMISSIONERS OF FRENCH HOEK v. HUGO</i> - - -                                            | 78                      | <i>GREEN v. BIGGS</i> - - -                                                                                                 | 255                     |
| <i>Montagu v. Inchiquin</i> (23 W. R. 592) discussed.                                        |                         | <i>Olivant v. Wright</i> (1 Ch. D. 346, 33 L. T. 457) followed.                                                             |                         |
| <i>COCKERELL v. ESSEX</i> - - -                                                              | 510                     | <i>THOMPSON &amp; CURZON</i> - - -                                                                                          | 180                     |
| <i>Montgomery v. Montgomery</i> (3 Jo. & Lat. 57) dictum discussed.                          |                         | <i>Omichund v. Barker</i> (1 Atk. 21, Willes, 538) followed and applied.                                                    |                         |
| <i>WILLIAMS v. WILLIAMS</i> - - -                                                            | 523                     | <i>ATT.-GEN. v. BRADLAUGH</i> - - -                                                                                         | 27                      |
| <i>Moore v. Moore</i> (L. R. 18 Eq. 474, 30 L. T. 752) approved.                             |                         | <i>Oram v. Brearey</i> (2 Ex. D. 346, 46 L. J. Ex. 481, 36 L. T. 475) overruled.                                            |                         |
| <i>Re SHIELD</i> - - -                                                                       | 170                     | <i>CHADWICK v. BALL</i> - - -                                                                                               | 391                     |
| <i>Moore v. Moore</i> (29 Beav. 496) distinguished.                                          |                         |                                                                                                                             |                         |
| <i>MANTON v. TABOIS</i> - - -                                                                | 511                     | <i>Palin v. Hills</i> (1 My. & K. 470) overruled.                                                                           |                         |
| <i>Morland v. Cook</i> (L. R. 6 Eq. 252, 16 W. R. 777) explained.                            |                         | <i>CLAY v. CLAY</i> - - -                                                                                                   | 51                      |
| <i>AUSTERBERRY v. OLDHAM</i> - - -                                                           | 121                     | <i>Patscheider v. G. W. Ry. Co.</i> (3 Ex. D. 153) distinguished.                                                           |                         |
| <i>Morris v. Davis</i> (3 Car. & P. 218) discussed and followed.                             |                         | <i>HODKINSON v. L. &amp; N. W. Ry. Co.</i> - - -                                                                            | 37                      |
| <i>GLENISTER v. HARDING</i> - - -                                                            | 147                     | <i>Pawsey v. Armstrong</i> (18 Ch. D. 698, 50 L. J. Ch. 683, 30 W. R. 469) questioned.                                      |                         |
| <i>Murray v. Walter</i> (Cr. & P. 114) distinguished.                                        |                         | <i>WALKER v. HIRSCH</i> - - -                                                                                               | 28                      |
| <i>LONDON AND YORKS. BANK v. COOPER</i> - - -                                                | 326                     | <i>Peacock v. Burt</i> (4 L. J. Ch. 33) observed upon.                                                                      |                         |
| <i>Mutual Society, Re</i> (24 Ch. D. 4952, n.) distinguished.                                |                         | <i>WEST LONDON COMMERCIAL BANK v. RELIANCE BUILDING SOCIETY</i> - - -                                                       | 26                      |
| <i>Re ALLIANCE SOCIETY</i> - - -                                                             | 89                      | <i>Pease v. Jackson</i> (L. R. 3 Ch. 576) discussed.                                                                        |                         |
|                                                                                              |                         | <i>SANGSTER v. COCHRANE</i> - - -                                                                                           | 6                       |
| <i>Nevill v. Boddam</i> (28 Beav. 554, 29 L. J. Ch. 738, 2 L. T. 273, 8 W. R. 490) followed. |                         | <i>Phipps v. Lovegrove</i> (L. R. 16 Eq. 80, 42 L. J. Ch. 892) dictum approved and followed.                                |                         |
| <i>Re MORTIMER</i> - - -                                                                     | 520                     | <i>NEWMAN v. NEWMAN</i> - - -                                                                                               | 26                      |

TABLE OF CASES, FOLLOWED, OVERRULED, ETC.

lxviii

|                                                                                                                                           | Column<br>of<br>Digest. |                                                                                                                                | Column<br>of<br>Digest. |
|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Pigott and G. W. Ry. Co., Re</i> (18 Ch. D. 146,<br>50 L. J. Ch. 679, 44 L. T. 792,<br>29 W. R. 727) followed.                         |                         | <i>Reg. v. Barrow</i> (L. R. 1 C. C. 156, 38 L. J. M.<br>C. 20, 19 L. T. 293, 17 W. R. 102, 11<br>Cox C. C. 191) not followed. |                         |
| <i>Re SPENCER-BELL AND L. &amp; S. W.<br/>Ry. Co.</i> - - - - -                                                                           | 220                     | <i>Reg. v. DRE</i> - - - - -                                                                                                   | 127                     |
| <i>Pinnel's Case</i> (5 Rep. 117a) followed.                                                                                              |                         | <i>Reg. v. Commissioners of Sewers</i> (8 T. R. 312)<br>followed.                                                              |                         |
| <i>FOAKES v. BEER</i> - - - - -                                                                                                           | 1                       | <i>Reg. v. COMMISSIONERS OF SEWERS</i> - - - - -                                                                               | 419                     |
| <i>Pinney v. Hunt</i> (16 Ch. D. 98, 26 W. R. 69)<br>followed.                                                                            |                         | <i>Reg. v. D'Oyly</i> (12 Ad. & E. 139) followed.                                                                              |                         |
| <i>BRADFORD v. YOUNG</i> - - - - -                                                                                                        | 135                     | <i>Re CHILLINGTON IRON Co.</i> - - - - -                                                                                       | 99                      |
| <i>Pocock's Policy, Re</i> (L. R. 6 Ch. 445) ob-<br>served upon.                                                                          |                         | <i>Reg. v. G. W. Ry. Co.</i> (L. R. 4 Q. B. 323,<br>17 W. R. 670) questioned.                                                  |                         |
| <i>SCOTNEY v. LOMER</i> - - - - -                                                                                                         | 297                     | <i>Reg. v. DENBIGHSHIRE JJ.</i> - - - - -                                                                                      | 293                     |
| <i>Poole's Case</i> (14 L. R. Ir. 14) explained.                                                                                          |                         | <i>Reg. v. Hastings Local Board</i> (6 B. & S. 401)<br>followed.                                                               |                         |
| <i>NALLY v. THE QUEEN</i> - - - - -                                                                                                       | 70                      | <i>Ex parte KINGSTOWN</i> - - - - -                                                                                            | 371                     |
| <i>Powell Duffryn Steam Coal Co. v. Taff Vale<br/>Ry. Co.</i> (L. R. 9 Ch. 331) distin-<br>guished.                                       |                         | <i>Reg. v. Hazlewood</i> (48 J. P. 151) not followed.                                                                          |                         |
| <i>WOODRUFF v. BRECON, &amp; Co., Ry. Co.</i> - - - - -                                                                                   | 380                     | <i>Reg. v. SAMPSON</i> - - - - -                                                                                               | 124                     |
| <i>Powell's Trusts, Re</i> (39 L. J. Ch. 188, 18<br>W. R. 228) discussed and not fol-<br>lowed.                                           |                         | <i>Reg. v. Percy</i> (L. R. 9 Q. B. 64, 22 W. R.<br>72) overruled.                                                             |                         |
| <i>ROUS v. JACKSON</i> - - - - -                                                                                                          | 301                     | <i>Reg. v. PHILLIMORE</i> - - - - -                                                                                            | 204                     |
| <i>Preston v. Melville</i> (2 Rob. App. 107) ex-<br>plained.                                                                              |                         | not followed.                                                                                                                  |                         |
| <i>EWING v. ORR EWING</i> - - - - -                                                                                                       | 396                     | <i>Reg. v. BIRON</i> - - - - -                                                                                                 | 204                     |
| " <i>Prince of Saxe Coburg</i> " (3 Moo. P. C. 1)<br>explained.                                                                           |                         | <i>Rex v. Pease</i> (4 B. & Ad. 30) distinguished                                                                              |                         |
| <i>THE "PONTIDA"</i> - - - - -                                                                                                            | 423                     | <i>TRUMAN v. L. B. &amp; S. C. Ry. Co.</i> - - - - -                                                                           | 276                     |
| <i>Procurator-General v. Williams</i> (31 L. J.<br>P. M. & A. 157) followed.                                                              |                         | <i>Rex v. Smith</i> (1 Phill. & Arn. on Evidence,<br>118) overruled.                                                           |                         |
| <i>Re PERTON'S ESTATE. PEARSON<br/>v. ATT.-GEN.</i> - - - - -                                                                             | 147                     | <i>Reg. v. Cox</i> - - - - -                                                                                                   | 148                     |
|                                                                                                                                           |                         | <i>Richard v. Moore</i> (38 L. T. 841) discussed.                                                                              |                         |
| <i>Quarman v. Burnett</i> (6 M. & W. 499, 9<br>L. J. Ex. 308) followed.                                                                   |                         | <i>PAGE v. MORGAN</i> - - - - -                                                                                                | 392                     |
| <i>JONES v. MAYOR OF LIVERPOOL</i> - - - - -                                                                                              | 243                     | <i>Ricket v. Metrop. Ry. Co.</i> (L. R. 2 H. L. 175,<br>16 L. T. 542) discussed.                                               |                         |
|                                                                                                                                           |                         | <i>Re WADHAM &amp; N. E. Ry. Co.</i> - - - - -                                                                                 | 217                     |
| <i>Rabone &amp; Co., Re</i> (Seb. Dig. 395) followed.                                                                                     |                         | <i>Ridgway v. Ward</i> (col. 58) distinguished.                                                                                |                         |
| <i>MITCHELL'S TRADE MARK</i> - - - - -                                                                                                    | 470                     | <i>DANIEL v. WHITFIELD</i> - - - - -                                                                                           | 58                      |
| <i>Ramsden v. Dyson</i> (L. R. 1 H. L. 129,<br>14 W. R. 926) observed upon.                                                               |                         | <i>Ripon (Earl) v. Hobart</i> (3 My. & K. 169)<br>discussed.                                                                   |                         |
| <i>WELLER v. STONE</i> - - - - -                                                                                                          | 236                     | <i>FLETCHER v. BEALEY</i> - - - - -                                                                                            | 275                     |
| <i>Ramegate Victoria Hotel Co. v. Montefiore</i><br>(L. R. 1 Ex. 109, 35 L. J. Ex. 90,<br>13 L. T. 715, 14 W. R. 335) distin-<br>guished. |                         | <i>Robey's Ironworks v. Ollier</i> (L. R. 7 Ch. 695)<br>approved.                                                              |                         |
| <i>Ex parte BOYLE</i> - - - - -                                                                                                           | 81                      | <i>PHELPS v. COMBER</i> - - - - -                                                                                              | 51                      |
| <i>Randall v. Russell</i> (3 Mer. 190) considered.                                                                                        |                         | <i>Robinson v. Cliffe</i> (31 L. T. 680) distin-<br>guished.                                                                   |                         |
| <i>PHILLIPS v. PHILLIPS</i> - - - - -                                                                                                     | 212                     | <i>DANIEL v. WHITFIELD</i> - - - - -                                                                                           | 58                      |
| <i>Randle v. Gould</i> (8 E. & B. 457, 27 L. J.<br>Q. B. 57) distinguished.                                                               |                         | — <i>v. Finlay</i> (9 Ch. D. 487, 39 L. T.<br>398) followed.                                                                   |                         |
| <i>NICOL v. NICOL</i> - - - - -                                                                                                           | 184                     | <i>Re JONES'S TRADE MARK</i> - - - - -                                                                                         | 466                     |
| <i>Read v. Anderson</i> (13 Q. B. D. 779, 53 L. J.<br>Q. B. 532, 51 L. T. 55, 32 W. R.<br>950, 49 J. P. 4) followed.                      |                         | — <i>v. Mollet</i> (L. R. 7 H. L. 802,<br>44 L. J. C. P. 362) followed.                                                        |                         |
| <i>SEYMOUR v. BRIDGE</i> - - - - -                                                                                                        | 455                     | <i>PERRY v. BARNETT</i> - - - - -                                                                                              | 456                     |
| — <i>v.</i> — distinguished.                                                                                                              |                         | — <i>v. Trevor</i> (12 Q. B. D. 423, 53 L. J.<br>Q. B. 85, 50 L. T. 190, 32 W. R. 374)<br>distinguished.                       |                         |
| <i>PERRY v. BARNETT</i> - - - - -                                                                                                         | 456                     | <i>CARLISLE BANK v. THOMPSON</i> - - - - -                                                                                     | 64                      |
| <i>Hedondo v. Chaytor</i> (4 Q. B. D. 453) fol-<br>lowed.                                                                                 |                         | discussed.                                                                                                                     |                         |
| <i>EBERARD v. GASSIER</i> - - - - -                                                                                                       | 321                     | <i>SANGSTER v. COCHRANE</i> - - - - -                                                                                          | 64                      |
|                                                                                                                                           |                         | <i>Rolls v. St. George's Vestry</i> (14 Ch. D. 785,<br>49 L. J. Ch. 691, 43 L. T. 140, 28<br>W. R. 867) considered.            |                         |
|                                                                                                                                           |                         | <i>WANDSWORTH BOARD v. UNITED<br/>TELEPHONE Co.</i> - - - - -                                                                  | 248                     |

|                                                                                                      | Column<br>of<br>Digest. |                                                                                                                                                  | Column<br>of<br>Digest. |
|------------------------------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Rosing's Application, Re</i> (col. 464) followed.                                                 |                         | <i>Smith v. Butcher</i> (10 Ch. D. 113, 48 L. J. Ch. 136, 27 W. R. 281) distinguished.                                                           |                         |
| <i>Re LYNDON'S APPLICATION</i> -                                                                     | 465                     | <i>KEAY v. BOULTON</i> - - -                                                                                                                     | 512                     |
| <i>Rourke v. White Moss Colliery Co.</i> (1 C. P. D. 556, 46 L. J. C. P. 283) explained -            |                         | <i>Smith v. Davies</i> (col. 257) observed upon.                                                                                                 |                         |
| <i>FARRER v. LACY, HARTLAND &amp; Co.</i>                                                            | 322                     | <i>BLAKE v. HARVEY</i> - - -                                                                                                                     | 341                     |
| (2 C. P. D. 205) distinguished.                                                                      |                         | <i>Smith v. Lucas</i> (18 Ch. D. 531) dissented from.                                                                                            |                         |
| <i>JONES v. LIVERPOOL (MAYOR)</i> -                                                                  | 243                     | <i>Re VARDON'S TRUSTS</i> - - -                                                                                                                  | 140                     |
| <i>Row v. Row</i> (L. R. 7 Eq. 414) distinguished.                                                   |                         | <i>Smith v. Marrable</i> (11 M. & W. 5) held inapplicable.                                                                                       |                         |
| <i>HURST v. HURST</i> - - -                                                                          | 152                     | <i>CHESTER v. POWELL</i> - - -                                                                                                                   | 211                     |
| <i>Russell v. Jackson</i> (9 Hare, 387) approved.                                                    |                         | <i>Smith v. Smith</i> (L. R. 20 Eq. 500, 44 L. J. Ch. 630, 32 L. T. 787, 23 W. R. 771) considered.                                               |                         |
| <i>REG. v. COX</i> - - -                                                                             | 148                     | <i>HOLLAND v. WORLEY</i> - - -                                                                                                                   | 226                     |
| <i>Russell v. Killett</i> (3 Sm. & G. 264) followed.                                                 |                         | <i>Sobey v. Sobey</i> (L. R. 15 Eq. 200, 27 L. T. 808) distinguished.                                                                            |                         |
| <i>Re OVEY</i> - - -                                                                                 | 71                      | <i>COLVERSON v. BLOOMFIELD</i> -                                                                                                                 | 15                      |
| <i>St. George's, Hanover Square v. Sparrow</i> (16 C. B. N. S. 209, 33 L. J. M. C. 118) disapproved. |                         | <i>Société Générale de Paris v. Tramways Co.</i> (col. 96) discussed.                                                                            |                         |
| <i>SPACKMAN v. PLUMSTEAD BOARD OF WORKS</i> - - -                                                    | 250                     | <i>BRADFORD BANK v. BRIGGS</i> -                                                                                                                 | 261                     |
| <i>Salkeld v. Johnson</i> (1 Mac. & G. 243, 13 L. T. (O.S.) 501) observed upon.                      |                         | <i>Solomon v. Vintners' Co.</i> (4 H. & N. 585) distinguished.                                                                                   |                         |
| <i>ESDAILE v. PAYNE</i> - - -                                                                        | 460                     | <i>LATIMER v. OFFICIAL, &amp; C., SOCIETY</i>                                                                                                    | 457                     |
| <i>Salter v. Kavanagh</i> (1 Dr. & Wal. 668) followed.                                               |                         | <i>Sottomaior, Re</i> (L. R. 9 Ch. 677) opinion of James, L.J., dissented from.                                                                  |                         |
| <i>NUGENT v. NUGENT</i> - - -                                                                        | 524                     | <i>Re DANLEY</i> - - -                                                                                                                           | 233                     |
| <i>Salvin v. North Brancepeth Coal Co.</i> (L. R. 9 Ch. 705) discussed.                              |                         | <i>Speight, Re</i> (13 Q. B. D. 42) followed.                                                                                                    |                         |
| <i>FLETCHER v. BEALEY</i> - - -                                                                      | 275                     | <i>Ex parte BLEASE</i> - - -                                                                                                                     | 23                      |
| <i>Sander v. Heathfield</i> (L. R. 19 Eq. 21, 31 L. T. 400) distinguished.                           |                         | not followed.                                                                                                                                    |                         |
| <i>Re DUNNING</i> - - -                                                                              | 159                     | <i>Ex parte SHEAD</i> - - -                                                                                                                      | 23                      |
| <i>Sandrey v. Mitchell</i> (3 B. & S. 405, n.) explained.                                            |                         | <i>Speller v. Bristol Steam Navigation Co.</i> (13 Q. B. D. 96, 53 L. J. Q. B. 322, 50 L. T. 400, 32 W. R. 670, 5 Asp. M. C. 228) distinguished. |                         |
| <i>IN THE GOODS OF HARDING</i> -                                                                     | 5                       | <i>CARSHORE v. N. E. RY. CO.</i> -                                                                                                               | 357                     |
| <i>Schibasy v. Westenholtz</i> (L. R. 6. Q. B. 155, 40 L. J. Q. B. 73) questioned.                   |                         | <i>Stanford v. Roberts</i> (26 Ch. D. 155, 63 L. J. Ch. 338, 50 L. T. 147, 32 W. R. 404, 48 J. P. 692) approved.                                 |                         |
| <i>VOINET v. BARRETT</i> - - -                                                                       | 166                     | <i>Re MERCHANT TAYLORS' CO.</i> -                                                                                                                | 441                     |
| <i>Schulte, Ex parte</i> (L. R. 9 Ch. 409, 30 L. T. 478, 22 W. R. 462) followed.                     |                         | followed.                                                                                                                                        |                         |
| <i>Ex parte REVELL (No. 2)</i> - - -                                                                 | 39                      | <i>FLEMING v. HARDCASTLE</i> - -                                                                                                                 | 442                     |
| <i>Scott v. Cumberland</i> (L. R. 18 Eq. 578) distinguished.                                         |                         | <i>Stewart, Ex parte</i> (4 D. G. J. & S. 543) discussed.                                                                                        |                         |
| <i>HURST v. HURST</i> - - -                                                                          | 152                     | <i>SOCIÉTÉ GÉNÉRALE v. TRAMWAYS UNION</i> - - -                                                                                                  | 96                      |
| <i>Seymour v. Bridge</i> (col. 455) distinguished.                                                   |                         | <i>Stewart v. Jones</i> (3 D. G. & J. 582) followed.                                                                                             |                         |
| <i>PERRY v. BARNETT</i> - - -                                                                        | 456                     | <i>Re ROBERTS</i> - - -                                                                                                                          | 514                     |
| <i>Shelley's Case</i> (1 Rep. 936) observed upon.                                                    |                         | <i>Stonor's Trusts, Re</i> (24 Ch. D. 195, 52 L. J. Ch. 776, 48 L. T. 963, 32 W. R. 413) considered.                                             |                         |
| <i>BOWEN v. LEWIS</i> - - -                                                                          | 521                     | <i>Re QUEADE'S TRUSTS</i> - - -                                                                                                                  | 409                     |
| <i>Siebert v. Findlater</i> (7 Ch. D. 801) observed upon.                                            |                         | <i>Stuart v. Cockerell</i> (L. R. 5 Ch. 713) distinguished.                                                                                      |                         |
| <i>SIEBERT v. ABBOTT</i> - - -                                                                       | 462                     | <i>WATSON v. YOUNG</i> - - -                                                                                                                     | 525                     |
| <i>Simpson v. Smith</i> (L. R. 6 C. P. 87, 40 L. J. M. C. 89, 24 L. T. 100) overruled.               |                         | <i>Studd v. Cook</i> (8 App. Cas. 577, 10 C. of S. Cas. (H.L.) 53) discussed.                                                                    |                         |
| <i>SPACKMAN v. PLUMSTEAD BOARD OF WORKS</i> - - -                                                    | 250                     | <i>BRADFORD v. YOUNG</i> - - -                                                                                                                   | 135                     |
| <i>Smith (Madeline)</i> (2 Irving's Just. Rep. 653) examined.                                        |                         |                                                                                                                                                  |                         |
| <i>LAUDERDALE PEERAGE</i> - - -                                                                      | 290                     |                                                                                                                                                  |                         |
| <i>Smith v. Anderson</i> (15 Ch. D. 247, 50 L. J. Ch. 39) followed.                                  |                         |                                                                                                                                                  |                         |
| <i>Re SIDDALL</i> - - -                                                                              | 98                      |                                                                                                                                                  |                         |

## TABLE OF CASES FOLLOWED, OVERRULED, ETC.

Ixi

|                                                                                                                 | Column<br>of<br>Digest. |                                                                                                                        | Column<br>of<br>Digest. |
|-----------------------------------------------------------------------------------------------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>on v. Sutton</i> (22 Ch. D. 511, 52 L. J. Ch. 333, 48 L. T. 95, 31 W. R. 369) distinguished.                 |                         | <i>Turner v. Morgan</i> (L. R. 10 C. P. 587) commented on.                                                             |                         |
| <i>Re POWERS</i> - - - - -                                                                                      | 230                     | <i>LLOYD v. LLOYD</i> - - - - -                                                                                        | 168                     |
| <i>et v. Meredith</i> (4 Giff. 207, 22 L. J. Ch. 147, 7 L. T. 664) not followed.                                |                         | <i>Turner v. Turner</i> (21 L. J. Ch. 843) distinguished.                                                              |                         |
| <i>HUTCHINGS v. HUMPHREYS</i> - - - - -                                                                         | 206                     | <i>BUTLER v. BUTLER</i> - - - - -                                                                                      | 317                     |
| <i>nbanks, Ex parte</i> (11 Ch. D. 525) distinguished.                                                          |                         | " <i>Two Ellens</i> ," <i>The</i> (L. R. 4 P. C. 161, 20 W. R. 592) explained.                                         |                         |
| <i>GORDON v. JAMES</i> - - - - -                                                                                | 438                     | <i>THE "HEINRICH BJORN"</i> - - - - -                                                                                  | 434                     |
| <i>nton v. Bailey</i> (4 App. Cas. 70) observed upon.                                                           |                         | <i>Union Bank of Manchester, Ex parte</i> (L. R. 12 Eq. 354) discussed.                                                |                         |
| <i>ESCHBACH v. COLLINS</i> - - - - -                                                                            | 527                     | <i>SOCIÉTÉ GÉNÉRALE v. TRAMWAYS UNION</i> - - - - -                                                                    | 96                      |
| <i>ling v. Jones</i> (12 C. B. (N.S.) 826, 11 H. L. C. 290) considered.                                         |                         | <i>Unsworth v. Speakman</i> (4 Ch. D. 620) disapproved.                                                                |                         |
| <i>NEWSON v. PENDER</i> - - - - -                                                                               | 227                     | <i>Re ROBERTS</i> - - - - -                                                                                            | 514                     |
| <i>ry v. Ashton</i> (1 Q. B. D. 314, 34 L. T. 97) explained.                                                    |                         | <i>Upmann v. Forester</i> (24 Ch. D. 231, 52 L. J. Ch. 946, 49 L. T. 122, 32 W. R. 28) followed.                       |                         |
| <i>THE "EUROPEAN"</i> - - - - -                                                                                 | 429                     | <i>WITTMANN v. OPPENHEIM</i> - - - - -                                                                                 | 114                     |
| <i>ell v. State Co.</i> (3 Ch. D. 529) dictum of Jessel, M.R., not followed.                                    |                         | <i>Upton v. Brown</i> (12 Ch. D. 872, 48 L. J. Ch. 756, 41 L. T. 340, 28 W. R. 38) considered.                         |                         |
| <i>HOAR v. LOE</i> - - - - -                                                                                    | 339                     | <i>HARDMAN v. MAFFETT</i> - - - - -                                                                                    | 414                     |
| <i>lor v. Taylor</i> (L. R. Eq. 155) dissented from                                                             | 7                       | <i>Van Breda v. Silberbauer</i> (L. R. 3 P. C. 84, 18 W. R. 556) approved.                                             |                         |
| <i>pler's Trusts, Re</i> (4 N. R. 494) considered.                                                              |                         | <i>COMMISSIONERS OF FRENCH HOEK v. HUGO</i> - - - - -                                                                  | 78                      |
| <i>Re GREENWOOD'S TRUSTS</i> - - - - -                                                                          | 480                     | <i>Vaughan v. Taff Vale Ry. Co.</i> (5 H. & N. 679, 2 L. T. 394) distinguished.                                        |                         |
| <i>ant v. Elliott</i> (1 Bos. & Pul. 8) followed.                                                               |                         | <i>TRUMAN v. L. B. &amp; S. C. RY. CO.</i> - - - - -                                                                   | 276                     |
| <i>BRIDGER v. SAVAGE</i> - - - - -                                                                              | 169                     | <i>Veal v. Veal</i> (27 Beav. 303) followed.                                                                           |                         |
| <i>rs, Ex parte, Re Milan Tramways</i> (25 Ch. D. 587, 53 L. J. Ch. 1008, 50 L. T. 545, 32 W. R. 601) followed. |                         | <i>CLEMENT v. CHEESMAN</i> - - - - -                                                                                   | 136                     |
| <i>Ex parte REID</i> - - - - -                                                                                  | 33                      | <i>Vivian v. Little</i> (11 Q. B. D. 370, 52 L. J. Q. B. 771, 48 L. T. 793, 31 W. R. 891, 47 J. P. 566) distinguished. |                         |
| <i>nas v. Daw</i> (L. R. 2 Ch. 1, 36 L. J. Ch. 201, 15 L. T. 200, 15 W. R. 113) considered.                     |                         | <i>LONDON &amp; YORKS. BANK v. COOPER</i> - - - - -                                                                    | 326                     |
| <i>GARD v. COMMISSIONERS OF SEWERS</i> - - - - -                                                                | 246                     | <i>Vize v. Stoney</i> (2 D. & Wal. 659, 1 D. & War. 337) observed upon.                                                |                         |
| <i>npson and Curzon, Re</i> (col. 180) not followed.                                                            |                         | <i>Re WREY</i> - - - - -                                                                                               | 520                     |
| <i>Re ADAMES</i> - - - - -                                                                                      | 180                     | <i>Wade v. Wilson</i> (22 Ch. D. 235, 52 L. J. Ch. 399, 47 L. T. 696, 31 W. R. 237) not followed.                      |                         |
| not followed.                                                                                                   |                         | <i>GREEN v. BIGGS</i> - - - - -                                                                                        | 255                     |
| <i>Re TUCKER</i> - - - - -                                                                                      | 180                     | <i>Waite v. Littlewood</i> (L. R. 8 Ch. 70, 28 L. T. 123) distinguished.                                               |                         |
| <i>racian," The</i> (L. R. 3 A. & E. 504) not followed.                                                         |                         | <i>Re BENN</i> - - - - -                                                                                               | 519                     |
| <i>THE "WILLIAM SYMINGTON"</i> - - - - -                                                                        | 305                     | <i>Walburn v. Ingilby</i> (1 My. & K. 79) considered.                                                                  |                         |
| <i>esley v. Harper</i> (10 Ch. D. 393, 39 L. T. 552, 27 W. R. 249) followed.                                    |                         | <i>BRADFORD v. YOUNG</i> - - - - -                                                                                     | 355                     |
| <i>Re TRUFORT</i> - - - - -                                                                                     | 309                     | <i>Walmsley v. Milne</i> (7 C. B. (N.S.) 135) followed                                                                 |                         |
| <i>h v. Hallett</i> (L. R. 4 Ch. 242) distinguished.                                                            |                         | <i>Walton v. Edge</i> (col. 66) applied.                                                                               |                         |
| <i>Ev parte MOSS</i> - - - - -                                                                                  | 45                      | <i>Re MIDDLESBOROUGH, &amp; CO., BUILDING SOCIETY</i> (No. 2) - - - - -                                                | 65                      |
| <i>he v. Metropolitan Warehousing Co.</i> (L. R. 6 Ch. 671) considered.                                         |                         | <i>Waring, Ex parte</i> (19 Ves. 345, 2 Rose 182) applied.                                                             |                         |
| <i>GANDY v. GANDY</i> - - - - -                                                                                 | 183                     | <i>Ex parte DEVER</i> (No. 2) - - - - -                                                                                | 53                      |
| <i>is v. Illingworth</i> (2 Dr. & Sm. 344) approved and followed.                                               |                         |                                                                                                                        |                         |
| <i>Re NORRIS</i> - - - - -                                                                                      | 472                     |                                                                                                                        |                         |
| <i>cer v. Morris</i> (1 Cr. & M. 73) distinguished.                                                             |                         |                                                                                                                        |                         |
| <i>THOMPSON v. WRIGHT</i> - - - - -                                                                             | 198                     |                                                                                                                        |                         |
| <i>t v. Moxhay</i> (6 Ph. 774) explained.                                                                       |                         |                                                                                                                        |                         |
| <i>AUSTEBERRY v. OLDHAM</i> - - - - -                                                                           | 121                     |                                                                                                                        |                         |

|                                                                                                                   | Column<br>of<br>Digest. |                                                                                                              | Column<br>of<br>Digest. |
|-------------------------------------------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Watson, Ex parte</i> (5 Ch. D. 35) distinguished.                                                              |                         | <i>Wilkinson v. Anglo-Californian, &amp;c., Co.</i> (18 Q. B. (N.S.) 728, 21 L. J. Q. B. 327) distinguished. |                         |
| <i>Ex parte MILES</i> - - -                                                                                       | 392                     | <i>EXCHANGE BANK OF YARMOUTH v. BLETHEN</i> - - -                                                            | 1                       |
| <i>Watson, Kipling &amp; Co., Re</i> (23 Ch. D. 500, 52 L. J. Ch. 473, 49 L. T. 115, 31 W. R. 574) distinguished. |                         | <i>Williams v. Crosling</i> (3 C. B. 957) followed.                                                          |                         |
| <i>Re INTERNATIONAL MARINE HYDROPATHIC CO.</i> - - -                                                              | 87                      | <i>TOMLINSON v. LAND CORPORATION</i> - - -                                                                   | 1                       |
| — <i>v. Cox</i> (L. R. 15 Eq. 219, 42 L. J. Ch. 279, 21 W. R. 310) explained and followed.                        |                         | <i>Williams v. Kershaw</i> (5 Ch. & F. 111 n.) distinguished.                                                |                         |
| <i>HUTCHINGS v. HUMPHREYS</i> - - -                                                                               | 206                     | <i>Re SUTTON</i> - - -                                                                                       | 1                       |
| — <i>v. Knight</i> (19 Beav. 369) followed.                                                                       |                         | <i>Williamson v. Williamson</i> (L. R. 9 Ch. 729) distinguished.                                             |                         |
| <i>Re MEREDITH</i> - - -                                                                                          | 122                     | <i>HAYWOOD v. SILBER</i> - - -                                                                               | 1                       |
| <i>West Hartlepool Iron Co., Re</i> (34 L. T. (N.S.) 568) distinguished.                                          |                         | <i>Willoughby v. Middleton</i> (2 J. & H. 344, 31 L. J. Ch. 683, 6 L. T. 814, 10 W. R. 460) followed.        |                         |
| <i>Re INTERNATIONAL MARINE HYDROPATHIC CO.</i> - - -                                                              | 87                      | <i>Re QUEADE'S TRUSTS</i> - - -                                                                              | 4                       |
| discussed.                                                                                                        |                         | <i>Willmott's Trusts, Re</i> (L. R. 7 Eq. 532) discussed and explained.                                      |                         |
| <i>Re NATIONAL ARMS, &amp;c., Co.</i> - - -                                                                       | 88                      | <i>WAKEFIELD v. MAFFET</i> - - -                                                                             | 4                       |
| <i>Wheatley, Re</i> (col. 139) dissented from.                                                                    |                         | <i>Wilson, Re. Alexander v. Calder</i> (col. 315) considered.                                                |                         |
| <i>Re VARTON'S TRUSTS</i> - - -                                                                                   | 140                     | <i>Re BLAKE</i> - - -                                                                                        | 1                       |
| <i>White, Re</i> (9 L. T. (N.S.) 702) explained and distinguished.                                                |                         | — <i>v. Atkinson</i> (33 Beav. 536, 4 D. J. & S. 455) considered.                                            |                         |
| <i>Ex parte SALAMAN</i> - - -                                                                                     | 28                      | <i>HARDMAN v. MAFFETT</i> - - -                                                                              | 4                       |
| — <i>v. Baker</i> (2 D. G. F. & J. 55, 29 L. J. Ch. 577, 2 L. T. (N.S.) 583, 8 W. R. 553) distinguished.          |                         | — <i>v. Church</i> (12 Ch. D. 454) considered.                                                               |                         |
| <i>HILL to CHAPMAN</i> - - -                                                                                      | 519                     | <i>BRADFORD v. YOUNG</i> - - -                                                                               | 1                       |
| — <i>v. Chitty</i> (L. R. 1 Eq. 372, 14 W. R. 366) distinguished.                                                 |                         | — <i>v. Cozwell</i> (23 Ch. D. 764, 52 L. J. Ch. 976) overruled.                                             |                         |
| <i>ROBERTSON v. RICHARDSON</i> - - -                                                                              | 415                     | <i>Re COMPTON</i> - - -                                                                                      | 1                       |
| — <i>v. Springett</i> (L. R. 4 Ch. 300, 20 L. T. 502) followed.                                                   |                         | — <i>v. Eden</i> (11 Beav. 217, 5 Ex. 752, 14 Beav. 317, 18 Q. B. 474, 16 Beav. 153) discussed.              |                         |
| <i>TAYLOR v. LEY</i> - - -                                                                                        | 515                     | <i>BUTLER v. BUTLER</i> - - -                                                                                | 1                       |
| — <i>v. White</i> (22 Ch. D. 555, 52 L. J. Ch. 232, 48 L. T. 151, 31 W. R. 451) followed.                         |                         | — <i>v. Strugnell</i> (7 Q. B. D. 548, 50 L. J. M. C. 145, 45 L. T. 219) overruled.                          |                         |
| <i>KING v. KING</i> - - -                                                                                         | 141                     | <i>HERMANN v. JEUCHNER</i> - - -                                                                             | 1                       |
| <i>Whitehouse v. Fellowes</i> (10 C. B. (N.S.) 765, 30 L. J. C. P. 305, 4 L. T. 177, 9 W. R. 556) discussed.      |                         | <i>Wingfield v. Wingfield</i> (9 Ch. D. 658, 47 L. J. Ch. 768, 39 L. T. 227, 26 W. R. 711) followed.         |                         |
| <i>MITCHELL v. DARLEY MAIN CO.</i> - - -                                                                          | 130                     | <i>KEAY v. BOULTON</i> - - -                                                                                 | 1                       |
| — <i>v. Partridge</i> (3 Sw. 365) approved.                                                                       |                         | <i>Winter v. Bartholomew</i> (11 Ex. 704, 25 L. J. Ex. 62, 4 W. R. 264) approved.                            |                         |
| <i>COLVERSON v. BLOOMFIELD</i> - - -                                                                              | 15                      | <i>SMITH v. CRITCHFIELD</i> - - -                                                                            | 4                       |
| <i>Whitworth v. Hall</i> (2 B. & Ad. 695) approved.                                                               |                         | <i>Witt v. Corcoran</i> (2 Ch. D. 69, 34 L. T. 550) followed.                                                |                         |
| <i>METROPOLITAN RANK v. POOLEY</i> - - -                                                                          | 70                      | <i>STEVENS v. METROPOLITAN RY.</i> - - -                                                                     | 1                       |
| <i>Wigfield v. Potter</i> (45 L. T. 612) approved.                                                                |                         | <i>Womersley v. Church</i> (17 L. T. 190) approved.                                                          |                         |
| <i>Re SIDDALL</i> - - -                                                                                           | 98                      | <i>BALLARD v. TOMLINSON</i> - - -                                                                            | 4                       |
| <i>Wildes v. Davies</i> (1 Sm. & Giff. 475, 22 L. J. Ch. 497) explained.                                          |                         | <i>Woodhouse v. Walker</i> (5 Q. B. D. 404, 42 L. T. 770) followed.                                          |                         |
| <i>Re APPLETON</i> - - -                                                                                          | 524                     | <i>ANDREW v. WILLIAMS</i> - - -                                                                              | 4                       |
| <i>Wilkes' Estate, Re</i> (16 Ch. D. 597) approved.                                                               |                         | <i>Wootton's Estate, Re</i> (L. R. 1 Eq. 589) approved.                                                      |                         |
| <i>COTTRELL v. COTTRELL</i> - - -                                                                                 | 405                     | <i>COTTRELL v. COTTRELL</i> - - -                                                                            | 4                       |
|                                                                                                                   |                         | <i>Worthington's Application, Re</i> (14 Ch. D. 8, 49 L. J. Ch. 646) followed.                               |                         |
|                                                                                                                   |                         | <i>Re LYNDON'S APPLICATION</i> - - -                                                                         | 4                       |



## TABLE OF STATUTES.

|                                                    | Column<br>of<br>Digest. |                                                         | Column<br>of<br>Digest. |
|----------------------------------------------------|-------------------------|---------------------------------------------------------|-------------------------|
| 13 Edw. 1 ( <i>De Donis</i> ).                     |                         | 7 Anne, c. 5 ( <i>Naturalization</i> ).                 |                         |
| <i>Re</i> CARNAC'S WILL - - -                      | 408                     | <i>Re</i> WILLOUGHBY - - -                              | 189                     |
| 5 Ric. 2, st. 1, c. 5 ( <i>Forcible Entry</i> ).   |                         | 7 Anne, c. 20 ( <i>Land Registry</i> ), s. 1.           |                         |
| SCOTT <i>v.</i> BROWN & CO. - - -                  | 216                     | ARDEN <i>v.</i> ARDEN - - -                             | 265                     |
| 23 Hen. 8, c. 5 ( <i>Drainage</i> ).               |                         | 9 Anne c. 20 ( <i>Mandamus</i> ).                       |                         |
| REG. <i>v.</i> COMMISSIONERS OF SEWERS             |                         | REG. <i>v.</i> PIREHILL JJ. - - -                       | 343                     |
| FOR ESSEX - - -                                    | 419                     | 4 Geo. 2, c. 21 ( <i>British Subjects</i> ), s. 1.      |                         |
| 32 Hen. 8, c. 9 ( <i>Criminal Law</i> ), s. 2.     |                         | <i>Re</i> WILLOUGHBY - - -                              | 189                     |
| KENNEDY <i>v.</i> LYELL. - - -                     | 494                     | 9 Geo. 2, c. 36 ( <i>Mortmain</i> ).                    |                         |
| 37 Hen. 8, c. 12 ( <i>Administration</i> ).        |                         | <i>Re</i> CLARK - - -                                   | 73                      |
| ESDAILE <i>v.</i> PAYNE - - -                      | 460                     | GELL <i>v.</i> CARVER - - -                             | 74                      |
| 13 Eliz. c. 5 ( <i>Fraudulent Conveyance</i> ).    |                         | O'BRIEN <i>v.</i> TYSEN - - -                           | 73                      |
| GREEN <i>v.</i> BRAND - - -                        | 168                     | MARTIN <i>v.</i> LACON - - -                            | 74                      |
| <i>Re</i> MADDEVER, &C. - - -                      | 168                     | s. 3,                                                   |                         |
| 13 Eliz. c. 9 ( <i>Sewers</i> ).                   |                         | <i>Re</i> WATTS. CORNFORD <i>v.</i> ELLIOTT             | 73                      |
| REG. <i>v.</i> COMMISSIONERS OF SEWERS             |                         | 13 Geo. 3, c. 21 ( <i>Naturalization</i> ), s. 1.       |                         |
| FOR ESSEX - - -                                    | 419                     | <i>Re</i> WILLOUGHBY - - -                              | 189                     |
| 13 Eliz. c. 20 ( <i>Benefices</i> ).               |                         | 36 Geo. 3, c. 52 ( <i>Legacy Duty</i> ), s. 6.          |                         |
| MCBEAN <i>v.</i> DEANE - - -                       | 137                     | <i>Re</i> HIGGINS. DAY <i>v.</i> TURNELL - - -          | 390                     |
| 27 Eliz. c. 4 ( <i>Voluntary Conveyance</i> ).     |                         | 43 Geo. 3, c. 108 ( <i>Church Building</i> ).           |                         |
| <i>Re</i> LULHAM. BRINTON <i>v.</i> LULHAM         | 495                     | O'BRIEN <i>v.</i> TYSEN - - -                           | 73                      |
| SCHREIBER <i>v.</i> DINKEL - - -                   | 496                     | 55 Geo. 3, c. 194 ( <i>Apothecaries</i> ), s. 14.       |                         |
| 21 Jac. 1, c. 16 ( <i>Limitations</i> ), ss. 3, 7. |                         | DAVIES <i>v.</i> MAKUNA - - -                           | 246                     |
| LOWE <i>v.</i> FOX - - -                           | 228                     | 56 Geo. 3, c. 50 ( <i>Landlord and Tenant</i> ), s. 11. |                         |
| 22 & 23 Car. 2, c. 10 ( <i>Distributions</i> ).    |                         | LYBBE <i>v.</i> HART - - -                              | 29                      |
| <i>Re</i> BLOCKLEY. BLOCKLEY <i>v.</i> BLOCK-      |                         | 57 Geo. 3, c. cxxix. ( <i>Metropolitan Paving</i> ),    |                         |
| LEY - - -                                          | 7                       | ss. 80, 82.                                             |                         |
| 29 Car. 2, c. 3 ( <i>Frauds</i> ).                 |                         | TEULIERE <i>v.</i> VESTRY OF ST. MARY                   |                         |
| PHELAN <i>v.</i> TEDCASTLE - - -                   | 205                     | ABBOTTS, KENSINGTON - - -                               | 252                     |
| s. 4.                                              |                         | GARD <i>v.</i> COMMISSIONERS OF THE                     |                         |
| <i>Ex parte</i> WHITEHEAD. <i>Ex parte</i>         |                         | CITY OF LONDON - - -                                    | 246                     |
| ROUTH - - -                                        | 185                     | 3 Geo. 4, c. 126 ( <i>Turnpikes</i> ), s. 118.          |                         |
| STUDDS <i>v.</i> WATSON - - -                      | 167                     | HYDE <i>v.</i> ENTWISTLE - - -                          | 173                     |
| <i>Re</i> HUDSON - - -                             | 108                     | 5 Geo. 4, c. 83 ( <i>Vagrant</i> ), s. 4.               |                         |
| GOODALL <i>v.</i> HARDING - - -                    | 486                     | CLARK <i>v.</i> THE QUEEN - - -                         | 462                     |
| ss. 7, 8.                                          |                         | 9 Geo. 4, c. 14 ( <i>Tenterden's Act</i> ), s. 6.       |                         |
| <i>Re</i> LULHAM. BRINTON <i>v.</i> LULHAM         | 495                     | ASHBY <i>v.</i> DAY - - -                               | 367                     |
| s. 17.                                             |                         | 9 Geo. 4, c. 77 ( <i>Turnpikes</i> ), s. 18.            |                         |
| PAGE <i>v.</i> MORGAN - - -                        | 392                     | HYDE <i>v.</i> ENTWISTLE - - -                          | 173                     |
| 4 & 5 Anne c. 3 ( <i>Costs</i> ), s. 23.           |                         | 11 Geo. 4 & 1 Will. 4, c. 65 ( <i>Real Property</i> ),  |                         |
| SNELLING <i>v.</i> PULLING - - -                   | 312                     | ss. 12, 14.                                             |                         |
| 6 Anne c. 11 ( <i>Treaty of Union</i> ), art. 19.  |                         | <i>Re</i> GRIFFITHS - - -                               | 190                     |
| EWING <i>v.</i> ORR-EWING - - -                    | 396                     | 11 Geo. 4, & 1 Will. 4, c. 68 ( <i>Carrier</i> )        |                         |
|                                                    |                         | BUNCH <i>v.</i> G. W. RY. CO. - - -                     | 378                     |

|                                                         | Column<br>of<br>Digest. |                                                        | Column<br>of<br>Digest. |
|---------------------------------------------------------|-------------------------|--------------------------------------------------------|-------------------------|
| 1 Will. 4, c. 21 ( <i>Mandamus</i> ).                   |                         | 1 Vict. c. 26 ( <i>Wills</i> ), ss. 24, 27.            |                         |
| REG. v. FIREHILL JJ., NORTH STAF-                       |                         | Re HERNANDO. HERNANDO v. SAW-                          |                         |
| FORDSHIRE - - - - -                                     | 343                     | TELL - - - - -                                         | 398                     |
| 1 & 2 Will. 4, c. 41 ( <i>Constable</i> ), ss. 5, 149.  |                         | — s. 24.                                               |                         |
| BRYSON v. RUSSELL - - - - -                             | 107                     | STAFFORD v. STAFFORD - - - - -                         | 181                     |
| 2 Will. 4, c. 45 ( <i>Reform</i> ), s. 36.              |                         | —                                                      |                         |
| BAKER v. MONMOUTH - - - - -                             | 278                     | Re PORTAL AND LAMB - - - - -                           | 518                     |
| MAGARRILL v. WHITEHAVEN OVER-                           |                         | — s. 26.                                               |                         |
| SEERS - - - - -                                         | 279                     | BUTLER v. BUTLER - - - - -                             | 517                     |
| 2 Will. 4, c. 65 ( <i>Reform</i> ), s. 11.              |                         | 1 & 2 Vict. c. 109 ( <i>Tithe Rentcharge</i> ).        |                         |
| JOHNSTON v. GUILD - - - - -                             | 278                     | IRISH LAND COMMISSION v. GRANT                         | 231                     |
| 2 & 3 Will. 4, c. 71 ( <i>Prescription</i> ), ss. 2, 4, |                         | 1 & 2 Vict. c. 110 ( <i>Judgments</i> ), s. 19.        |                         |
| 5, 6.                                                   |                         | Re LORD KENSINGTON. BACON v.                           |                         |
| HOLLINS v. VERNEY - - - - -                             | 363                     | FORD - - - - -                                         | 200                     |
| — s. 8.                                                 |                         | 2 & 3 Vict. c. 11 ( <i>Judgments</i> ), s. 4.          |                         |
| SYMONS v. LEAKER - - - - -                              | 364                     | Re LORD KENSINGTON. BACON v.                           |                         |
| 2 & 3 Will. 4, c. 100 ( <i>Tithe Prescription</i> ).    |                         | FORD - - - - -                                         | 200                     |
| ESDAILE v. PAYNE - - - - -                              | 460                     | 2 & 3 Vict. c. 93 ( <i>Constables</i> ), s. 8.         |                         |
| 3 & 4 Will. 4, c. 27 ( <i>Limitations</i> ).            |                         | BRYSON v. RUSSELL - - - - -                            | 107                     |
| NUGENT v. NUGENT - - - - -                              | 524                     | 3 & 4 Vict. c. 65 ( <i>Admiralty</i> ), s. 6.          |                         |
| — ss. 1, 2, 9.                                          |                         | THE "HEINRICH BJORN" - - - - -                         | 434                     |
| IRISH LAND COMMISSION v. GRANT                          | 231                     | 3 & 4 Vict. c. 82 ( <i>Judgments</i> ), s. 2.          |                         |
| — s. 40.                                                |                         | Re LORD KENSINGTON. BACON v.                           |                         |
| DOWER v. DOWER - - - - -                                | 230                     | FORD - - - - -                                         | 200                     |
| — ss. 40, 42.                                           |                         | 3 & 4 Vict. c. 97 ( <i>Railways</i> ), s. 5.           |                         |
| DARLEY v. TENNANT - - - - -                             | 227                     | WOODRUFF v. BRECON AND MER-                            |                         |
| 3 & 4 Will. 4, c. 42 ( <i>Procedure</i> ), s. 2.        |                         | THYR TYDVIL JUNCTION RY. CO.                           | 380                     |
| Re WILLIAMES (or WILLIAMS) - - - - -                    | 498                     | 3 & 4 Vict. c. 113 ( <i>Advocson</i> ).                |                         |
| — s. 3.                                                 |                         | WELCH v. BISHOP of PETERBOROUGH                        | 9                       |
| DARLEY v. TENNANT - - - - -                             | 227                     | 5 Vict. c. 5 ( <i>Distingas</i> ), ss. 4, 5.           |                         |
| 3 & 4 Will. 4, c. 74 ( <i>Fines and Recoveries</i> ),   |                         | Re PRYNNE - - - - -                                    | 317                     |
| s. 22.                                                  |                         | 5 & 6 Vict. c. 35 ( <i>Property Tax</i> ), ss. 41, 44. |                         |
| AINSLIE v. AINSLIE - - - - -                            | 459                     | TISCHLER v. APTHORPE - - - - -                         | 388                     |
| — ss. 40, 47.                                           |                         | — Sched. D.                                            |                         |
| HALL-DARE v. HALL-DARE - - - - -                        | 460                     | GILLATT v. COLQUHOUN - - - - -                         | 388                     |
| — ss. 77, 79.                                           |                         | — s. 54.                                               |                         |
| Re DOCWRA. DOCWRA v. FAITH - - - - -                    | 487                     | LAST v. LONDON ASSURANCE COR-                          |                         |
| — s. 91.                                                |                         | PORATION - - - - -                                     | 387                     |
| FOWKE v. DRAYCOTT - - - - -                             | 414                     | — s. 60, Sched. A., r. 3, s. 100,                      |                         |
| 3 & 4 Will. 4, c. 106 ( <i>Inheritance</i> ).           |                         | Sched. D.                                              |                         |
| Re DOUGLAS. WOOD v. DOUGLAS                             | 133                     | BROUGHTON & PLAS POWER COAL                            |                         |
| 6 & 7 Will. 4, c. 32 ( <i>Building Societies</i> ).     |                         | Co. v. KIRKPATRICK - - - - -                           | 387                     |
| Re MUTUAL AID PERMANENT                                 |                         | — c. 39 ( <i>Factors</i> ), ss. 3, 7.                  |                         |
| BUILDING SOCIETY - - - - -                              | 63                      | KALTENBACH v. LEWIS - - - - -                          | 161                     |
| — ss. 1, 2.                                             |                         | — c. 45 ( <i>Copyright</i> ), s. 2.                    |                         |
| Re MIDDLESBOROUGH BUILDING SO-                          |                         | DAVIS v. COMITTI - - - - -                             | 114                     |
| CIETY - - - - -                                         | 65                      | — c. 51 ( <i>Poor Law</i> ), s. 141.                   |                         |
| MURRAY v. SCOTT - - - - -                               | 61                      | REG. v. RAWLINS - - - - -                              | 292                     |
| 6 & 7 Will. 4, c. 37 ( <i>Baker</i> ).                  |                         | — c. 55 ( <i>Railway Regulation</i> ), ss. 4, 6, 12.   |                         |
| DANIEL v. WHITFIELD - - - - -                           | 58                      | WOODRUFF v. BRECON & MERTHYR                           |                         |
| — ss. 6, 7.                                             |                         | TYDVIL JUNCTION RY. CO. - - - - -                      | 380                     |
| RIDGWAY v. WARD - - - - -                               | 58                      | — c. 97 ( <i>Costs</i> ).                              |                         |
| 6 & 7 Will. 4, c. 71 ( <i>Tithes</i> ), s. 67.          |                         | HASKER v. WOOD - - - - -                               | 319                     |
| BAILEY v. BADHAM - - - - -                              | 461                     | — c. 122 ( <i>Bankruptcy</i> ), ss. 37, 39.            |                         |
| 6 & 7 Will. 4, c. 96 ( <i>Assessment</i> ), s. 1.       |                         | Re DOVE. BOUSFIELD v. DOVE - - - - -                   | 27                      |
| REG. v. WEST BROMWICH SCHOOL                            |                         | 6 & 7 Vict. c. 73 ( <i>Solicitors</i> ), s. 2.         |                         |
| BOARD - - - - -                                         | 294                     | Re WALTER SIMMONS - - - - -                            | 451                     |
| 7 Will. 4 & 1 Vict. c. 73 ( <i>Trading Com-</i>         |                         | —                                                      |                         |
| <i>panies</i> ).                                        |                         | BLAKE v. HUMMEL - - - - -                              | 443                     |
| Ex parte CLAYTON & HARTAS - - - - -                     | 103                     | —                                                      |                         |
|                                                         |                         | Re WARD - - - - -                                      | 445                     |

## TABLE OF STATUTES.

lxxiii

|                                                             | Column<br>of<br>Digest. |                                                                                | Column<br>of<br>Digest. |
|-------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------|-------------------------|
| 6 & 7 Vict. c. 73, s. 37 ( <i>Solicitors</i> ).             |                         | 8 & 9 Vict. c. 18, s. 92.                                                      |                         |
| Re THOMPSON - - -                                           | 439                     | TREADWELL v. L. & S. W. RY. CO. -                                              | 224                     |
| Re CARTHEW. Re PAULL. Re EDWARDS - - -                      | 446                     | BARNES v. SOUTHSEA RY. CO. -                                                   | 223                     |
| ss. 37, 38, 39.                                             |                         | s. 108.                                                                        |                         |
| Ex parte MARSH. Re MARSH -                                  | 445                     | SPENCER BELL TO THE L. & S. W. RY. CO. AND THE METROPOLITAN DISTRICT RY. CO. - | 230                     |
| ss. 39, 41.                                                 |                         | c. 20 ( <i>Railway Clauses</i> ).                                              |                         |
| Re CHOWNE - - -                                             | 444                     | WOODRUFF v. BRECON & M. T. JUNCTION RY. CO. -                                  | 380                     |
| s. 41.                                                      |                         |                                                                                |                         |
| In re BOYCOTT - - -                                         | 444                     | FURNESS RY. v. CUMBERLAND, ETC. SOCIETY - - -                                  | 379                     |
| Re GLASCODINE - - -                                         | 444                     | ss. 6, 140.                                                                    |                         |
| 7 & 8 Vict. c. 101 ( <i>Bastardy</i> ), s. 70.              |                         | REG. v. EDWARDS AND EASTERN & MIDLAND RY. CO. -                                | 218                     |
| REG v. FLAVELL - - -                                        | 47                      | s. 77, 82.                                                                     |                         |
| c. 110 ( <i>Companies</i> ).                                |                         | MIDLAND RY. CO. v. MILES -                                                     | 380                     |
| Ex parte CLAYTON & HARTAS -                                 | 103                     | s. 90.                                                                         |                         |
| c. 111.                                                     |                         | M. S. & L. RY. CO. v. DENABY MAIN COLLIERY CO. -                               | 383                     |
| Ex parte CLAYTON & HARTAS -                                 | 103                     | s. 140.                                                                        |                         |
| c. 113 ( <i>Banks</i> ).                                    |                         | RICHARDS v. WEST MIDDLESEX, ETC., CO. -                                        | 501                     |
| Ex parte CLAYTON & HARTAS -                                 | 103                     | 8 & 9 Vict. 100 ( <i>Lunatic</i> ), ss. 72, 105.                               |                         |
| 8 Vict. c. 16 ( <i>Companies Clauses</i> ), ss. 38, 42, 44. |                         | LOWE v. FOX - - -                                                              | 233                     |
| Re BURY PORT RY. CO. - -                                    | 85                      | s. 105.                                                                        |                         |
| s. 97.                                                      |                         | HASKER v. WOOD - - -                                                           | 319                     |
| TREADWELL v. L. & S. W. RY. CO. -                           | 224                     | 8 & 9 Vict. c. 106 ( <i>Real Property</i> ), s. 6.                             |                         |
| c. 85 ( <i>Railway Clauses</i> ), ss. 68, 75.               |                         | KENNEDY v. LYELL - - -                                                         | 494                     |
| BROOKS v. L. & N. W. RY. CO. -                              | 376                     | 8 & 9 Vict. c. 109 ( <i>Gaming</i> ).                                          |                         |
| 8 & 9 Vict. c. 18 ( <i>Lands Clauses</i> ).                 |                         | BRIDGER v. SAVAGE - - -                                                        | 169                     |
| WADHAM v. N. E. RY. CO. -                                   | 217                     | s. 19.                                                                         |                         |
| Re MERCHANT TAYLORS' COMPANY -                              | 441                     | Re C. G. SCOTT - - -                                                           | 234                     |
| ss. 3, 16, 84, 85.                                          |                         | 9 & 10 Vict. c. 93 ( <i>Lord Campbell's Act</i> ).                             |                         |
| G. W. RY. CO. v. SWINDON & CHELTENHAM RY. CO. -             | 222                     | THE "VERA CRUZ" - - -                                                          | 202                     |
| s. 6.                                                       |                         | 9 & 10 Vict. c. 95 ( <i>County Courts</i> ), s. 94.                            |                         |
| BIRKENHEAD (MAYOR) v. L. & N. W. RY. CO. - - -              | 219                     | ASPEY v. JONES - - -                                                           | 117                     |
| ss. 18, 19, 23, 25, 27, 28, 30.                             |                         | 10 & 11 Vict. c. 15 ( <i>Gasworks Clauses</i> ), s. 18.                        |                         |
| SHEPHERD v. CORPORATION OF NORWICH - - -                    | 224                     | WOOD v. WEST HAM GAS CO. -                                                     | 169                     |
| s. 24.                                                      |                         | 10 & 11 Vict. c. 17 ( <i>Waterworks Clauses</i> ), s. 68.                      |                         |
| REG. v. EDWARDS AND EASTERN & MIDLAND RY. CO. -             | 218                     | HAYWARD v. EAST LONDON WATERWORKS CO. - - -                                    | 501                     |
| s. 63.                                                      |                         | ss. 74, 85.                                                                    |                         |
| REG. v. ESSEX - - -                                         | 218                     | RICHARDS v. W. MIDDLESEX, ETC., CO. - - -                                      | 501                     |
| s. 68.                                                      |                         | 10 & 11 Vict. c. 27 ( <i>Harbours</i> ), s. 52.                                |                         |
| BIRKENHEAD (MAYOR) v. L. & N. W. RY. CO. - - -              | 219                     | THE "RHOSINA" - - -                                                            | 433                     |
| s. 69.                                                      |                         | 10 & 11 Vict. c. 34 ( <i>Towns Improvement</i> ), ss. 47, 49, 50, 51.          |                         |
| Re WARD'S ESTATES - - -                                     | 220                     | NEWTON-IN-MAKERFIELD IMPROVEMENT COMMISSIONERS v. LANCAS-TER JJ. - - -         | 175                     |
| s. 74.                                                      |                         | s. 53.                                                                         |                         |
| COTTELL v. COTTELL - - -                                    | 405                     | PORTSMOUTH (MAYOR) v. SMITH -                                                  | 462                     |
| s. 80.                                                      |                         | 11 & 12 Vict. c. 42 ( <i>Summary Procedure</i> ), s. 17.                       |                         |
| Re GEDLING RECTORY - - -                                    | 220                     | REG. v. JONES - - -                                                            | 123                     |
| ss. 80, 85.                                                 |                         |                                                                                |                         |
| Re SWINDON, ETC., RY. ACT.                                  |                         |                                                                                |                         |
| CHARLTON v. ROLLESTON -                                     | 219                     |                                                                                |                         |
| s. 92.                                                      |                         |                                                                                |                         |
| MORRISON, WOOD & CO. v. G. E. RY. CO. - - -                 | 223                     |                                                                                |                         |

|                                                                                                                 | Column<br>of<br>Digest. |                                                                                                                    | Column<br>of<br>Digest. |
|-----------------------------------------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------|-------------------------|
| 11 & 12 Vict. c. 43 ( <i>Jervis's Act</i> ), s. 11.<br>REG. v. EDWARDS AND EASTERN AND<br>MIDLAND RY. CO. - - - | 218                     | 15 & 16 Vict. c. 76 ( <i>Common Law Procedure</i> ),<br>s. 210.<br>CROFT v. LONDON AND COUNTY<br>BANKING CO. - - - | 216                     |
| METROPOLITAN BOARD OF WORKS v.<br>ANTHONY & CO. - - -                                                           | 251                     | 15 & 16 Vict. c. lxxvii. ( <i>City of London<br/>Court</i> ), s. 18.<br>THE "PALOMARES" - - -                      | 308                     |
| s. 14.<br>REG. v. STANBURY EARDLEY - - -                                                                        | 236                     | s. 74.<br>HOWARD v. GRAVES - - -                                                                                   | 75                      |
| s. 31.<br>ALISON v. CHARLESWORTH - - -                                                                          | 232                     | 15 & 16 Vict. c. 80 ( <i>Masters Abolition</i> ),<br>s. 11, 26, 27.<br>Re TWEEDY - - -                             | 481                     |
| 11 & 12 Vict. c. 44 ( <i>Mandamus</i> ), s. 5.<br>REG. v. BIRON - - -                                           | 204                     | 15 & 16 Vict. c. 83 ( <i>Patent</i> ), s. 41.<br>SMITH v. CROPPER - - -                                            | 287                     |
| REG. v. PHILLIMORE - - -                                                                                        | 204                     | s. 43.<br>PARNELL v. MORT, LIDDELL, & CO. - - -                                                                    | 286                     |
| REG. v. STANBURY EARDLEY - - -                                                                                  | 236                     | CROPPER v. SMITH (No. 4) - - -                                                                                     | 287                     |
| 11 & 12 Vict. c. 45 ( <i>Companies</i> ).<br>Ex parte CLAYTON & HARTAS - - -                                    | 103                     | BADISCHE, ANILIN, ETC. v. LEVIN-<br>STEIN - - -                                                                    | 288                     |
| 11 & 12 Vict. c. 63 ( <i>Public Health</i> ), s. 48.<br>MAYOR OF NEW WINDSOR v. STO-<br>VELL - - -              | 371                     | 15 & 16 Vict. c. 86 ( <i>Chancery Amendment</i> ),<br>ss. 38, 41.<br>MANSEL v. CLANRICARDE - - -                   | 335                     |
| 12 & 13 Vict. c. 45 ( <i>Sessions</i> ), s. 11.<br>HOLBORN GUARDIANS v. CHERTSEY<br>GUARDIANS - - -             | 310                     | BACKHOUSE v. ALCOCK - - -                                                                                          | 335                     |
| 12 & 13 Vict. c. 92 ( <i>Cruelty to Animals</i> ), s. 2.<br>CALLAGHAN v. ROYAL SOCIETY, ETC. - - -              | 127                     | 16 & 17 Vict. c. 34 ( <i>Income Tax</i> ).<br>GILLATT v. COLQUHOUN - - -                                           | 388                     |
| 12 & 13 Vict. c. 106 ( <i>Bankruptcy</i> ), s. 165.<br>Ex parte REVELL. Re TOLLE-<br>MACHE - - -                | 39                      | s. 2, sched. D.<br>TIECHLER v. AITHORPE - - -                                                                      | 388                     |
| s. 199.<br>Re DOVE. BOUSFIELD v. DOVE - - -                                                                     | 27                      | s. 52.<br>LOTHIAN v. MACRAE - - -                                                                                  | 387                     |
| 12 & 13 Vict. c. 108 ( <i>Companies</i> ).<br>Ex parte CLAYTON & HARTAS - - -                                   | 103                     | 16 & 17 Vict. c. 51 ( <i>Succession Duty</i> ), ss. 1,<br>42, 44.<br>Re HIGGINS - - -                              | 390                     |
| 13 & 14 Vict. c. 60 ( <i>Trustee</i> ), ss. 2, 32, 35, 40.<br>Re TWEEDY - - -                                   | 481                     | 16 & 17 Vict. c. 59 ( <i>Stamps</i> ), s. 19.<br>BISSELL v. FOX - - -                                              | 19                      |
| ss. 2, 3, 32.<br>Re PHELPS' SETTLEMENT TRUSTS - - -                                                             | 480                     | 16 & 17 Vict. c. 70 ( <i>Lunacy</i> ), ss. 116, 124.<br>Re WELD - - -                                              | 234                     |
| s. 10.<br>Re GREENWOOD'S TRUSTS - - -                                                                           | 480                     | s. 118.<br>Re VAVASOUR. - - -                                                                                      | 234                     |
| ss. 32, 34.<br>Re LABM'S TRUSTS - - -                                                                           | 479                     | 16 & 17 Vict. c. 96 ( <i>Lunatic</i> ) s. 4, Sched. A.,<br>Form 1.<br>LOWE v. FOX - - -                            | 233                     |
| Re RACKSTRAW'S TRUSTS - - -                                                                                     | 481                     | 16 & 17 Vict. c. 97 ( <i>Lunatic</i> ), s. 68<br>REG. v. WHITFIELD - - -                                           | 233                     |
| s. 40.<br>Re LIGHTBODY'S TRUSTS - - -                                                                           | 479                     | ss. 94, 104.<br>Re WEBSTER. DERBY UNION GUAR-<br>DIANS v. SHARRATT - - -                                           | 234                     |
| 13 & 14 Vict. c. 61 ( <i>County Court</i> ), s. 19.<br>ASPEY v. JONES - - -                                     | 117                     | 16 & 17 Vict. c. 119 ( <i>Gaming</i> ), ss. 1, 3.<br>SNOW v. HILL - - -                                            | 169                     |
| 14 & 15 Vict. c. xxi. ( <i>Sewers</i> ), s. 54.<br>GARD v. COMMISSIONERS OF THE CITY<br>OF LONDON - - -         | 246                     | 16 & 17 Vict. c. 137 ( <i>Charitable Trusts</i> ),<br>ss. 17, 62.<br>STRICKLAND v. WELDON - - -                    | 71                      |
| 14 & 15 Vict. c. 100 ( <i>Criminal</i> ), s. 29.<br>REG. v. WELLARD - - -                                       | 125                     | 17 & 18 Vict. c. 31 ( <i>Railway and Canal<br/>Traffic</i> ).<br>BUNCH v. G. W. RY. CO. - - -                      | 378                     |
| 14 & 15 Vict. c. 104 ( <i>Ecclesiastical Property</i> ),<br>s. 3<br>LEIGH v. BURNETT - - -                      | 213                     | ss. 2, 3, 6.<br>M. S. RY. CO. v. DENABY MAIN<br>COLLIERY CO. - - -                                                 | 383                     |
| 15 & 16 Vict. c. 54 ( <i>County Courts</i> ), s. 6.<br>ASPEY v. JONES - - -                                     | 117                     |                                                                                                                    |                         |
| 15 & 16 Vict. c. 55 ( <i>Trustee Extension</i> ), s. 6.<br>Re TWEEDY - - -                                      | 481                     |                                                                                                                    |                         |

TABLE OF STATUTES.

lxxxv

|                                                        | Column<br>of<br>Digest. |                                                       | Column<br>of<br>Digest. |
|--------------------------------------------------------|-------------------------|-------------------------------------------------------|-------------------------|
| 17 & 18 Vict. c. 31, ss. 3, 6.                         |                         | 20 & 21 Vict. c. 85, s. 25.                           |                         |
| MURRAY v. GLASGOW & S. W. RY.                          |                         | NICOL v. NICOL - - -                                  | 184                     |
| Co. - - -                                              | 383                     |                                                       |                         |
| 17 & 18 Vict. c. 36 ( <i>Bills of Sale</i> ).          |                         | Re ROBINSON - - -                                     | 331                     |
| SHEFFIELD, ETC., BUILDING SOCIETY                      |                         | 20 & 21 Vict. c. 157 ( <i>Mayor's Court</i> ), s. 12. |                         |
| v. HARRISON - - -                                      | 164                     | ALDERTON v. ARCHER - - -                              | 215                     |
| — ss. 1, 7.                                            |                         | 21 & 22 Vict. c. 27 ( <i>Cairns' Act</i> ).           |                         |
| COOKSON v. SWIRE - - -                                 | 56                      | PARNELL v. MORT, LIDDELL, & Co.                       | 286                     |
| 17 & 18 Vict. c. 104 ( <i>Merchant Shipping</i> ),     |                         |                                                       |                         |
| s. 21.                                                 |                         | SAYERS v. COLLYER - - -                               | 120                     |
| THE "PALERMO" - - -                                    | 434                     | — s. 2.                                               |                         |
| — s. 187                                               |                         | HOLLAND v. WORLEY - - -                               | 226                     |
| THE "RAINBOW" - - -                                    | 434                     |                                                       |                         |
| — s. 249.                                              |                         | SERRAO v. NOEL - - -                                  | 145                     |
| SEWARD v. RUTTER - - -                                 | 436                     |                                                       |                         |
| — s. 430.                                              |                         | ALLEN v. AYRES - - -                                  | 226                     |
| MERSEY DOCKS, ETC., BOARD v.                           |                         | 21 & 22 Vict. c. 56 ( <i>Confirmation and Pro-</i>    |                         |
| OVERSEERS OF LLANEILLIAN - - -                         | 296                     | bate), s. 12.                                         |                         |
| 17 & 18 Vict. c. 125 ( <i>Common Law Pro-</i>          |                         | EWING v. ORR-EWING - - -                              | 396                     |
| cedure), s. 17.                                        |                         | 21 & 22 Vict. c. 90 ( <i>Medical</i> ), ss. 32, 40.   |                         |
| Re DAWDY & HARTCUP - - -                               | 13                      | DAVIES v. MAKUENA - - -                               | 246                     |
| 18 & 19 Vict. c. 32 ( <i>Stannaries</i> ), s. 22.      |                         | 22 & 23 Vict. c. 17 ( <i>Vexatious Indictments</i> ), |                         |
| Re WEST DEVON GREAT CONSOLS                            |                         | s. 2.                                                 |                         |
| MINE - - -                                             | 82                      | Ex parte REID. - - -                                  | 204                     |
| 18 & 19 Vict. c. 42 ( <i>Oaths</i> ), ss. 1—3.         |                         | 22 & 23 Vict. c. 35 ( <i>Real Property</i> ), s. 10.  |                         |
| Ex parte MAGEE. Re MAGEE - - -                         | 31                      | BOOTH v. SMITH (No. 2). - - -                         | 4                       |
| 18 & 19 Vict. c. 11 ( <i>Bills of Lading</i> ), s. 1.  |                         | — s. 16.                                              |                         |
| SEWELL v. BURDICK - - -                                | 423                     | Re FISHER & HASLETT. - - -                            | 492                     |
| 18 & 19 Vict. c. 120 ( <i>Metropolis Manage-</i>       |                         | 23 & 24 Vict. c. 38 ( <i>Limitations</i> ), s. 13.    |                         |
| ment), s. 6.                                           |                         | Re JOHNSON. SLY v. BLAKE - - -                        | 228                     |
| MOGG v. CLARK - - -                                    | 247                     | 23 & 24 Vict. c. 124 ( <i>Episcopal Estates</i> ),    |                         |
| — ss. 52, 53, 112.                                     |                         | s. 35.                                                |                         |
| HAMPSTEAD VESTRY v. COTTON - - -                       | 247                     | LEIGH v. BURNETT - - -                                | 213                     |
| — s. 73.                                               |                         | 23 & 24 Vict. c. 126 ( <i>Common Law Pro-</i>         |                         |
| Re CRAWLEY. ACTON v. CRAWLEY                           | 516                     | cedure), s. 1.                                        |                         |
| — ss. 78, 250.                                         |                         | CROFT v. LONDON AND COUNTY                            |                         |
| HAMPSTEAD VESTRY v. HOOPEL - - -                       | 249                     | BANKING Co.                                           | 216                     |
| — ss. 91, 108.                                         |                         | — s. 17.                                              |                         |
| HORNER v. WHITECHAPEL BOARD - - -                      | 247                     | WATERHOUSE v. GILBERT - - -                           | 339                     |
| — s. 105.                                              |                         | 23 & 24 Vict. c. 127 ( <i>Solicitors</i> ).           |                         |
| HILL v. EDWARD - - -                                   | 120                     | Re UNITED SHEPHERDS' WHEAL                            |                         |
| — ss. 158—161.                                         |                         | ROSE Co. - - -                                        | 449                     |
| GLEN v. OVERSEERS OF FULHAM - - -                      | 248                     | — s. 4.                                               |                         |
| 18 & 19 Vict. c. 122 ( <i>Metropolis Building</i> ),   |                         | Re JAMES - - -                                        | 437                     |
| ss. 3, 38.                                             |                         | — s. 26.                                              |                         |
| JOSOLYNE v. MEESON - - -                               | 251                     | Re WALTER SIMMONS - - -                               | 451                     |
| 18 & 19 Vict. c. 134 ( <i>Despatch of Business</i> ),  |                         | — s. 28.                                              |                         |
| s. 16.                                                 |                         | In re GREEN. GREEN v. GREEN - - -                     | 449                     |
| Re TWEEDY - - -                                        | 481                     |                                                       |                         |
| 19 & 20 Vict. c. 97 ( <i>Mercantile</i> ), s. 5.       |                         | ROWLAND v. WILLIAMS - - -                             | 449                     |
| Re RUSSELL. RUSSELL v. SHOOL-                          |                         |                                                       |                         |
| BRED - - -                                             | 210                     | Re WADSWORTH. RHODES v. SUG-                          |                         |
| 19 & 20 Vict. c. 108 ( <i>County Courts</i> ), s. 26.  |                         | DEN - - -                                             | 448                     |
| PRITCHARD v. PRITCHARD - - -                           | 344                     |                                                       |                         |
| — s. 39.                                               |                         | Ex parte ADAMS. DALLOW v.                             |                         |
| REG. v. JUDGE OF CITY OF LONDON                        |                         | GARROLD - - -                                         | 449                     |
| COURT - - -                                            | 243                     | — c. 142 ( <i>Benefices</i> ).                        |                         |
| — ss. 60, 72.                                          |                         | MCBEAN v. DEANE - - -                                 | 137                     |
| ASPEY v. JONES - - -                                   | 117                     | 23 & 24 Vict. c. 144 ( <i>Divorce Court</i> ), s. 2.  |                         |
| 20 & 21 Vict. c. 85 ( <i>Divorce</i> ), ss. 7, 21, 25, |                         | AHIER v. AHIER - - -                                  | 333                     |
| 26.                                                    |                         |                                                       |                         |
| DAWES v. CREYKE - - -                                  | 409                     |                                                       |                         |

|                                                               | Column<br>of<br>Digest. |                                                             | Column<br>of<br>Digest. |
|---------------------------------------------------------------|-------------------------|-------------------------------------------------------------|-------------------------|
| 23 & 24 Vict. c. 144, s. 7.                                   |                         | 25 & 26 Vict. c. 89, s. 30.                                 |                         |
| HOWARTH v. HOWARTH - -                                        | 333                     | SOCIÉTÉ GÉNÉRALE DE PARIS v.<br>TRAMWAYS UNION CO. - -      | 96                      |
| 24 Vict. c. 10 ( <i>Admiralty</i> ).                          |                         | — s. 32.                                                    |                         |
| — s. 5.                                                       |                         | ANGLO-MALTESE CO. - -                                       | 450                     |
| THE "HEINRICH BJORN" - -                                      | 434                     | — s. 35.                                                    |                         |
| — ss. 7, 35.                                                  |                         | Re MANCHESTER AND OLDHAM<br>BANK - - - -                    | 97                      |
| THE "VERA CRUZ" - -                                           | 202                     | — s. 38, sub-s. 7.                                          |                         |
| — s. 8.                                                       |                         | CANNON'S CASE - - - -                                       | 85                      |
| THE "MARION" - -                                              | 307                     | — s. 51.                                                    |                         |
| —                                                             |                         | Re RAILWAY SLEEPERS SUPPLY CO. -                            | 88                      |
| THE "ROBINSONS" AND THE<br>"SATELLITE" - - - -                | 306                     | —                                                           |                         |
| — s. 18.                                                      |                         | CALORIC ENGINE CO. - - - -                                  | 99                      |
| THE "VICTOR CORACEVICH" -                                     | 306                     | — ss. 75, 76, 103, 105, 106.                                |                         |
| — s. 34.                                                      |                         | Re HUBBACK INTERNATIONAL<br>MARINE, &C., CO. v. HAWES -     | 158                     |
| THE "NEWBATTLE" - -                                           | 307                     | — s. 82.                                                    |                         |
| 24 & 25 Vict. c. 96 ( <i>Criminal</i> ), s. 3.                |                         | Ex parte PHILIP AND KIDD. Re<br>UNITED STOCK EXCHANGE -     | 102                     |
| REG. v. McDONALD - -                                          | 125                     | — ss. 84, 153.                                              |                         |
| — ss. 3, 75.                                                  |                         | Ex parte GUILLEMIN. Re ORIENTAL<br>BANK CORPORATION - - - - | 103                     |
| Re DE PORTUGAL - -                                            | 160                     | — ss. 87, 122, 151.                                         |                         |
| — s. 24.                                                      |                         | Re MIDDLESBOROUGH FIRE BRICK<br>CO. - - - -                 | 99                      |
| GREENBANK v. SANDERSON -                                      | 164                     | — s. 98, 124.                                               |                         |
| —                                                             |                         | BRASNETT'S CASE (No. 2) - -                                 | 316                     |
| CAYGILL v. THWAITE - -                                        | 164                     | — s. 101.                                                   |                         |
| 24 & 25 Vict. c. 100 ( <i>Matrimonial Causes</i> ),<br>s. 43. |                         | BRASNETT'S CASE (No. 1) - -                                 | 103                     |
| WOODS v. WOODS - - - -                                        | 204                     | — s. 102.                                                   |                         |
| — s. 56.                                                      |                         | MILLER'S CASE - - - -                                       | 82                      |
| REG. v. BARRETT - - - -                                       | 122                     | — s. 115.                                                   |                         |
| 24 & 25 Vict. c. 133 ( <i>Drainage</i> ), s. 33.              |                         | Ex parte LEAVER. Re METRO-<br>POLITAN ELECTRIC, ETC., CO. - | 101                     |
| REG. v. COMMISSIONERS FOR ESSEX                               | 419                     | —                                                           |                         |
| 25 & 26 Vict. c. 42, ( <i>Sir J. Rolfe's</i> ).               |                         | BRASNETT'S CASE (No. 1) - -                                 | 103                     |
| PARNELL v. MORT, LIDDELL & Co.                                | 286                     | —                                                           |                         |
| 25 & 26 Vict. c. 61 ( <i>Highways</i> ), s. 2.                |                         | CREDIT CO. v. WEBSTER - -                                   | 101                     |
| OVER DARWEN (MAYOR OF) v.<br>LANCASTER JJ. - - - -            | 175                     | — ss. 116, 165.                                             |                         |
| 25 & 26 Vict. c. 63 ( <i>Admiralty</i> ), s. 32.              |                         | Re GREAT WESTERN COAL CON-<br>SUMERS' CO. - - - -           | 100                     |
| THE "RIFON" - - - -                                           | 429                     | — ss. 133, 158.                                             |                         |
| — s. 54.                                                      |                         | GOOCH v. LONDON BANKING ASSO-<br>CIATION - - - -            | 99                      |
| THE "DIONE" - - - -                                           | 434                     | — s. 138.                                                   |                         |
| 25 & 26 Vict. c. 86 ( <i>Lunacy Regulation</i> ), s. 3.       |                         | Re BRITISH ENVELOPE MANUFAC-<br>TURING CO. - - - -          | 99                      |
| Re DANBY - - - -                                              | 233                     | —                                                           |                         |
| — s. 4.                                                       |                         | Ex parte CLITHEROE - - - -                                  | 100                     |
| Re SCOTT - - - -                                              | 234                     | — s. 155.                                                   |                         |
| 25 & 26 Vict. c. 89 ( <i>Companies</i> ).                     |                         | LONDON AND YORKSHIRE BANK v.<br>COOPER - - - -              | 326                     |
| ASHBURY v. WATSON - -                                         | 91                      | — ss. 161, 162.                                             |                         |
| —                                                             |                         | Re GLAMORGANSHIRE BANKING CO.                               | 80                      |
| Re ORIENTAL BANK CORPORATION<br>No. 2 - - - -                 | 102                     | — s. 165.                                                   |                         |
| — s. 4.                                                       |                         | DRUM SLATE QUARRY CO. - -                                   | 86                      |
| Re SIDDALL - - - -                                            | 98                      | — s. 165.                                                   |                         |
| —                                                             |                         | Re FITZROY, ETC., CO. - - - -                               | 92                      |
| Ex parte POPPLETON. Re THOMAS                                 | 99                      |                                                             |                         |
| — ss. 22, 165.                                                |                         |                                                             |                         |
| GRIMWADE v. MUTUAL SOCIETY -                                  | 87                      |                                                             |                         |
| — s. 23.                                                      |                         |                                                             |                         |
| Re FLORENCE LANDS AND PUBLIC<br>WORKS CO. - - - -             | 81                      |                                                             |                         |
| —                                                             |                         |                                                             |                         |
| SHERRINGTON'S CASE - - -                                      | 80                      |                                                             |                         |

## TABLE OF STATUTES.

lxxvii

|                                                                                                                                  | Column<br>of<br>Digest. |                                                                                                                                       | Column<br>of<br>Digest. |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 25 & 26 Vict. c. 89 ( <i>Companies</i> ) s. 199.<br><i>Re</i> LLOYD GENERALE ITALIANO -                                          | 102                     | 29 & 30 Vict. c. 96, ( <i>Bills of Sale</i> ), s. 5.<br>COOKSON <i>v.</i> SWIRE -                                                     | 56                      |
| — — — — —<br><i>Ex parte</i> CLAYTON AND HARTAS -                                                                                | 103                     | 30 Vict. c. 23, ( <i>Insurance</i> ), ss. 7, 9.<br>BARROW, ETC., INSURANCE CO. <i>v.</i><br>ASHBURNER -                               | 196                     |
| — — — — — Table A., Art. 43. <i>Ex parte</i><br>MANSELL. <i>Re</i> CHILLINGTON IRON<br>Co. -                                     | 99                      | 30 & 31 Vict. c. 29 ( <i>Stock Exchange</i> ), s. 1.<br>PERRY <i>v.</i> BARNETT -                                                     | 456                     |
| 25 & 26 Vict. c. 102 ( <i>Metropolis Manage-</i><br><i>ment</i> ), ss. 74, 75.<br>BARLOW <i>v.</i> KENSINGTON VESTRY -           | 250                     | — — — — — SEYMOUR <i>v.</i> BRIDGE -                                                                                                  | 455                     |
| — — — — — s. 75.<br>SPACKMAN <i>v.</i> PLUMSTEAD BOARD OF<br>WORKS -                                                             | 250                     | 30 & 31 Vict. c. 47, ( <i>Lis Pendens</i> ), s. 2.<br>SCHOFIELD <i>v.</i> SOLOMON -                                                   | 231                     |
| — — — — — s. 96.<br>HILL <i>v.</i> EDWARD -                                                                                      | 120                     | 30 & 31 Vict. c. 102, ( <i>Representation of the</i><br><i>People</i> ), s. 4.<br>FORD <i>v.</i> ELMSLEY -                            | 281                     |
| — — — — — ss. 96, 97.<br><i>Re</i> CRAWLEY. ACTON <i>v.</i> CRAWLEY -                                                            | 516                     | 30 & 31 Vict. c. 124, ( <i>Merchant Shipping</i> ),<br>s. 9.<br>THE PALERMO -                                                         | 434                     |
| — — — — — s. 98, 107.<br>METROPOLITAN BOARDS OF WORKS<br><i>v.</i> LATHEY -                                                      | 250                     | 30 & 31 Vict. c. 131, ( <i>Companies</i> ).<br><i>Re</i> TAMBRACHERY ESTATES Co. -                                                    | 93                      |
| — — — — — s. 112.<br>HAMPSTEAD VESTRY <i>v.</i> HOPEL -                                                                          | 249                     | — — — — — <i>Re</i> RIVER PLATE FRESH MEAT Co.<br>s. 15.                                                                              | 93                      |
| 25 & 26 Vict. c. 103, ( <i>Union Assessment</i> ) s. 19.<br>REG. <i>v.</i> LANGRIVILLE OVERSEERS -                               | 295                     | — — — — — <i>Re</i> CONSOLIDATED TELEPHONE Co.<br>s. 25.                                                                              | 94                      |
| 25 & 26 Vict. c. 114, ( <i>Game</i> ), s. 2.<br>LLOYD <i>v.</i> LLOYD -                                                          | 168                     | — — — — — <i>Ex parte</i> STEPHENSON -                                                                                                | 94                      |
| 26 & 27 Vict. c. 112, ( <i>Telegraph</i> ), ss. 2, 3, 12.<br>WANDSWORTH BOARD OF WORKS <i>v.</i><br>UNITED TELEPHONE Co. -       | 248                     | — — — — — <i>Re</i> DELTA SYNDICATE, LIMITED.<br><i>Ex parte</i> FORDE -                                                              | 93                      |
| 26 & 27 Vict. c. 118, ( <i>Public Companies</i> ),<br>ss. 22, 23, 24, 30.<br><i>Re</i> BURY PORT RAILWAY Co. -                   | 85                      | — — — — — SHERRINGTON'S CASE -                                                                                                        | 80                      |
| 26 & 27 Vict. c. 120, ( <i>Advowson</i> ).<br>WELCH <i>v.</i> BISHOP OF PETERBOROUGH -                                           | 9                       | — — — — — s. 26.<br>SKINNER <i>v.</i> CITY OF LONDON MA-<br>RINE INSURANCE CORPORATION -                                              | 128                     |
| 27 & 28 Vict. c. 39 ( <i>Assessment</i> ), s. 1.<br>REG. <i>v.</i> LANGRIVILLE OVERSEERS -                                       | 295                     | 30 & 31 Vict. c. 142 ( <i>County Court</i> ), s. 10.<br>LEA <i>v.</i> PARKER -                                                        | 118                     |
| — — — — — REG. <i>v.</i> DENBIGHSHIRE JJ. -                                                                                      | 293                     | — — — — — s. 35.<br>HOWARD <i>v.</i> GRAVES -                                                                                         | 75                      |
| 27 & 28 Vict. c. 101, ( <i>Highways</i> ), s. 32.<br>REG. <i>v.</i> RAWLINS -                                                    | 292                     | 30 & 31 Vict. c. 144 ( <i>Insurance</i> ).<br>NEWMAN <i>v.</i> NEWMAN -                                                               | 262                     |
| — — — — — s. 33.<br>WORTHINGTON <i>v.</i> GILL -                                                                                 | 174                     | 31 & 32 Vict. c. 40 ( <i>Partition</i> ), s. 3.<br><i>Re</i> DYER -                                                                   | 282                     |
| — — — — — c. 114 ( <i>Settled Estates</i> ), ss. 49,<br>51, 66.<br><i>Re</i> KNATCHBULL'S SETTLED ESTATE -                       | 404                     | 31 & 32 Vict. c. 71 ( <i>County Court Admi-</i><br><i>nistrative</i> ), s. 23.<br>THE PALOMARES -                                     | 308                     |
| 27 & 28 Vict. c. cxxv. ( <i>Railway Passengers</i> ),<br>ss. 3, 16, 53.<br>FOX <i>v.</i> RAILWAY PASSENGERS AS-<br>SURANCE Co. - | 356                     | 31 & 32 Vict. c. 72 ( <i>Promissory Oaths</i> )<br>ATT.-GEN. <i>v.</i> BRADLAUGH -                                                    | 277                     |
| 28 & 29 Vict. c. 60 ( <i>Injuries by Dogs</i> ).<br>LEWIS <i>v.</i> JONES -                                                      | 253                     | 31 & 32 Vict. c. 110 ( <i>Telegraph</i> ), s. 2<br>WANDSWORTH BOARD OF WORKS <i>v.</i><br>UNITED TELEPHONE Co. -                      | 248                     |
| 28 & 29 Vict. c. 107, ( <i>Turnpikes</i> ), s. 2.<br>HYDE <i>v.</i> ENTWISTLE -                                                  | 173                     | 31 & 32 Vict. c. cxxx. ( <i>Court of Record</i> ), s. 7.<br>CHADWICK <i>v.</i> BALL -                                                 | 394                     |
| 29 Vict. c. 139 ( <i>Parliamentary Oaths</i> ), ss. 3, 5<br>ATT.-GEN. <i>v.</i> BRADLAUGH -                                      | 277                     | 32 & 33 Vict. c. 56, ( <i>Endowed Schools</i> ),<br>ss. 9, 19, sub-s. 2.<br><i>Re</i> ST. LEONARD, SHOREDITCH,<br>PAROCHIAL SCHOOLS - | 394                     |
| 29 & 30 Vict. c. 32, ( <i>Divorce</i> ), s. 1.<br>LINTON <i>v.</i> LINTON -                                                      | 37                      | 32 & 33 Vict. c. 62, ( <i>Debtors' Act</i> ).<br>TINNUCHI <i>v.</i> SMART -                                                           | 6                       |
| 29 & 30 Vict. c. 36, ( <i>Revenue</i> ), s. 8.<br>BROUGHTON AND PLAS POWER COAL<br>Co. <i>v.</i> KIRKPATRICK -                   | 387                     | — — — — — ss. 4, 6.<br>COLVERSON <i>v.</i> BLOOMFIELD -                                                                               | 15                      |

|                                                                  | Column<br>of<br>Digest. |                                                                                   | Column<br>of<br>Digest. |
|------------------------------------------------------------------|-------------------------|-----------------------------------------------------------------------------------|-------------------------|
| 32 & 33 Vict. c. 62 ( <i>Debtors' Act</i> ), s. 5.               |                         | 32 & 33 Vict. c. 114 ( <i>Abandonment of Rail-<br/>way</i> ), s. 5.               |                         |
| LINTON v. LINTON - - -                                           | 37                      | Re ENNIS AND WEST CLARE RAIL-<br>WAY - - -                                        | 376                     |
| MEAGER v. PELLEW - - -                                           | 15                      | 33 & 34 Vict. c. 28 ( <i>Attorneys and Solicitors</i> ),<br>s. 4.                 |                         |
| GENESE v. LASCELLES - - -                                        | 22                      | Re RUSSELL, SON & SCOTT - - -                                                     | 439                     |
| s. 5, sub-s. 2.                                                  |                         | ss. 7, 8, 9.                                                                      |                         |
| Ex parte KOSTER. Re PARK - - -                                   | 15                      | Ex parte PAYTON. Re OWEN - - -                                                    | 439                     |
| s. 15.                                                           |                         | 33 & 34 Vict. c. 52 ( <i>Extradition</i> ), s. 10.                                |                         |
| THORP v. DAKIN - - -                                             | 26                      | Re DE PORTUGAL - - -                                                              | 160                     |
| 32 & 33 Vict. c. 67 ( <i>Metropolitan Valuation</i> ),<br>s. 47. |                         | 33 & 34 Vict. c. 71, ( <i>National Debt</i> ), ss. 51,<br>54, 55.                 |                         |
| REG. v. OVERSEERS OF ST. MARY,<br>BERMONDSEY                     | 295                     | Ex parte HOUSE. Re MAY - - -                                                      | 270                     |
| 32 & 33 Vict. c. 68 ( <i>Divorce</i> ), s. 3.                    |                         | 33 & 34 Vict. c. 75 ( <i>Education</i> ).                                         |                         |
| M. v. D. - - -                                                   | 332                     | HUNTER v. JOHNSON - - -                                                           | 142                     |
| 32 & 33 Vict. c. 71 ( <i>Bankruptcy</i> ).                       |                         | REG. v. RAWLINS - - -                                                             | 292                     |
| METROPOLITAN BANK v. POOLEY - - -                                | 70                      | s. 30, sub-ss. 1, 4, 6, s. 35, Third<br>Sched. 7.                                 |                         |
| s. 5, sub-s. 4.                                                  |                         | SCOTT v. GREAT AND LITTLE<br>CLIFTON SCHOOL BOARD - - -                           | 142                     |
| NICHOLS TO NIXEY AND COLE-<br>CLOUGH - - -                       | 24                      | ss. 18, 19, 21, 23, 53.                                                           |                         |
| s. 6, sub-s. 3.                                                  |                         | REG. v. WEST BROMWICH SCHOOL<br>BOARD - - -                                       | 294                     |
| RICHARDSON v. PRATT - - -                                        | 21                      | s. 74.                                                                            |                         |
| s. 11.                                                           |                         | LONDON SCHOOL BOARD v. WOOD - - -                                                 | 142                     |
| BAERON v. EHLERS - - -                                           | 45                      | 33 & 34 Vict. c. 78 ( <i>Tramways</i> ), ss. 51, 52.                              |                         |
| s. 19.                                                           |                         | HARTLEY v. WILKINSON - - -                                                        | 471                     |
| Ex parte BULLOCK - - -                                           | 31                      | FURLONG v. S. LONDON TRAMWAYS<br>Co. - - -                                        | 244                     |
| s. 23.                                                           |                         | 33 & 34 Vict. c. 93 ( <i>Married Women's Pro-<br/>perty</i> ).                    |                         |
| Ex parte GOOD. Re SALKELD - - -                                  | 29                      | WELDON v. BATHE - - -                                                             | 179                     |
| s. 31.                                                           |                         | Re SOUTAR'S POLICY TRUSTS - - -                                                   | 179                     |
| VINT v. HUDSPITH - - -                                           | 151                     | 33 & 34 Vict. c. 97, ( <i>Stamps</i> ).                                           |                         |
| s. 34.                                                           |                         | INTERLEAF PUBLISHING Co. v.<br>PHILLIPS - - -                                     | 389                     |
| Ex parte HARRISON. Re PEAKE - - -                                | 31                      | ss. 15, 49, 53.                                                                   |                         |
| s. 39.                                                           |                         | YEO v. DAWE - - -                                                                 | 389                     |
| LEE & CHAPMAN'S CASE - - -                                       | 105                     | ss. 17, 120, 122.                                                                 |                         |
| ss. 66, 96.                                                      |                         | WELSH v. FORBES - - -                                                             | 390                     |
| REG. v. SURREY (or CROYDON)<br>COUNTY COURT JUDGE - - -          | 117                     | ss. 71, 72.                                                                       |                         |
| s. 67.                                                           |                         | MACLEOD v. COMMISSIONERS OF IN-<br>LAND REVENUE - - -                             | 390                     |
| Ex parte EDWARDS - - -                                           | 32                      | 34 & 35 Vict. c. 31 ( <i>Trades Unions</i> ), s. 12.                              |                         |
| s. 74.                                                           |                         | KNIGHT v. WHITMORE - - -                                                          | 471                     |
| Re LEVY'S TRUSTS - - -                                           | 416                     | 34 & 35 Vict. c. 41 ( <i>Gas</i> ), s. 15.                                        |                         |
| s. 83.                                                           |                         | WOOD v. WEST HAM GAS Co. - - -                                                    | 169                     |
| Ex parte NEWITT. Re MANSEL - - -                                 | 43                      | 34 & 35 Vict. c. 43 ( <i>Ecclesiastical Dilapida-<br/>tion</i> ), ss. 12, 16, 72. |                         |
| s. 90.                                                           |                         | KIMBER v. PARAVICINI - - -                                                        | 138                     |
| Ex parte BENWELL. Re HUTTON - - -                                | 24                      | 35 & 36 Vict. c. 65 ( <i>Bastardy</i> ).                                          |                         |
| ss. 119, 125.                                                    |                         | BERKLEY v. THOMPSON. - - -                                                        | 46                      |
| LYBBE v. HART - - -                                              | 29                      | s. 3.                                                                             |                         |
| s. 126.                                                          |                         | BILLINGTON v. CYPLES - - -                                                        | 47                      |
| NIXON v. VERRY - - -                                             | 415                     | s. 4.                                                                             |                         |
| Ex parte BOARD OF TRADE. Re<br>CHUDLEY - - -                     | 43                      | REG. v. FLAVELL - - -                                                             | 47                      |
| THORP v. DAKIN - - -                                             | 26                      |                                                                                   |                         |
| 32 & 33 Vict. c. 73 ( <i>Telegraph</i> ), ss. 2, 3.              |                         |                                                                                   |                         |
| WANDSWORTH BOARD OF WORKS v.<br>UNITED TELEPHONE Co. - - -       | 248                     |                                                                                   |                         |



## TABLE OF STATUTES.

lxxix

|                                                     | Column<br>of<br>Digest. |                                                         | Column<br>of<br>Digest. |
|-----------------------------------------------------|-------------------------|---------------------------------------------------------|-------------------------|
| 35 & 36 Vict. c. 76 ( <i>Coal Mines</i> ), s. 18.   |                         | 36 & 37 Vict. c. 66 ( <i>Judicature</i> ), ss. 56, 57.  |                         |
| HOPKINSON v. CAUNT -                                | 252                     | LONDON AND LANCASHIRE FIRE                              |                         |
| 35 & 36 Vict. c. 94 ( <i>Licensing</i> ), s. 42.    |                         | INSCE. CO. v. BRITISH AMERICAN                          |                         |
| REG. v. MERTHYR TYDVILL JJ. -                       | 193                     | ASSOCIATION - - -                                       | 354                     |
| 36 Vict. c. 9 ( <i>Bastardy</i> ), s. 5.            |                         | ss. 89, 90                                              |                         |
| BILLINGTON v. CYPLES -                              | 47                      | WEBSTER v. ARMSTRONG - -                                | 146                     |
| 36 & 37 Vict. c. 12 ( <i>Custody of Infants</i> ).  |                         | s. 100.                                                 |                         |
| Re LEWIN - - -                                      | 347                     | Re FAWSITT - - -                                        | 313                     |
| s. 1.                                               |                         | 36 & 37 Vict. c. 85 ( <i>Admiralty</i> ), s. 17.        |                         |
| Re ROWE - - -                                       | 188                     | THE "RIPON" - - -                                       | 429                     |
| 36 & 37 Vict. c. 48 ( <i>Railways Regulation</i> ), |                         | 36 & 37 Vict. c. 87 ( <i>Endowed Schools</i> ), s. 7.   |                         |
| ss. 1-6.                                            |                         | Re ST. LEONARD SHOREDITCH                               |                         |
| MURRAY v. GLASGOW & S. W. RY.                       |                         | PAROCHIAL SCHOOLS - - -                                 | 394                     |
| Co. - - -                                           | 383                     | 37 & 38 Vict. c. 42 ( <i>Building Society</i> ), s. 35, |                         |
| ss. 15, 26.                                         |                         | sub-s. 1.                                               |                         |
| HALL & CO. v. L. B. & S. C. RY.                     |                         | SINCLAIR v. MERCANTILE SOCIETY                          | 60                      |
| Co. - - -                                           | 381                     | s. 42.                                                  |                         |
| 36 & 37 Vict. c. 66 ( <i>Judicature</i> ).          |                         | SANGSTER v. COCHRANE - -                                | 64                      |
| JOSEPH v. LYONS - - -                               | 55                      | 37 & 38 Vict. c. 57 ( <i>Limitations</i> ), s. 8.       |                         |
| s. 16.                                              |                         | LINDSELL v. PHILLIPS - -                                | 230                     |
| Re TWEEDY - - -                                     | 481                     |                                                         |                         |
|                                                     |                         | DOWER v. DOWER - - -                                    | 230                     |
| AHIER v. AHIER - - -                                | 333                     |                                                         |                         |
| ss. 16, 23.                                         |                         | DARLEY v. TENNANT - - -                                 | 227                     |
| HARVEY v. LOVEKIN - -                               | 332                     | s. 10.                                                  |                         |
| ss. 16, 25, 34.                                     |                         | Re BLACHFORD - - -                                      | 227                     |
| WESTBURY, ETC., R. S. A. v. MERE-                   |                         | 37 & 38 Vict. c. 68 ( <i>Solicitor</i> ), s. 12.        |                         |
| DITH - - -                                          | 342                     | INCORPORATED LAW SOCIETY v.                             |                         |
| s. 19.                                              |                         | BEDFORD - - -                                           | 452                     |
| ROBINSON v. TUCKER - -                              | 338                     |                                                         |                         |
|                                                     |                         | SYMONDS v. INCORPORATED LAW                             |                         |
| DAWSON v. FOX - - -                                 | 338                     | SOCIETY - - -                                           | 452                     |
| ss. 19, 29, 50.                                     |                         | 37 & 38 Vict. c. 78 ( <i>Vendor and Purchaser</i> ).    |                         |
| ARMSTRONG v. ROYAL EXCHANGE                         |                         | SPENCER BELL TO THE L. & S. W.                          |                         |
| SHIPPING CO. - - -                                  | 312                     | RY. CO., ETC. - - -                                     | 220                     |
| ss. 19, 45.                                         |                         | s. 6.                                                   |                         |
| HOLBORN GUARDIANS v. CHERTSEY                       |                         | Re DOGWRA - - -                                         | 487                     |
| GUARDIANS - - -                                     | 310                     | s. 9.                                                   |                         |
| ss. 19, 47.                                         |                         | Re YOUNG & HARSTON'S CONTRACT                           | 488                     |
| ATT.-GEN. v. BRADLAUGH -                            | 311                     | 38 & 39 Vict. c. 24 ( <i>Criminal Law</i> ), s. 1.      |                         |
| s. 24, sub-s. 7.                                    |                         | REG. v. BUTT - - -                                      | 125                     |
| SERRAO v. NOEL - - -                                | 145                     | 38 & 39 Vict. c. 36 ( <i>Artizans' Dwellings</i> ).     |                         |
| s. 25, sub-s. 6.                                    |                         | Re SHAW AND THE BIRMINGHAM                              |                         |
| KNILL v. PROWSE - - -                               | 17                      | CORPORATION - - -                                       | 16                      |
| s. 25, sub-s. 8.                                    |                         | 38 & 39 Vict. c. 50 ( <i>County Court</i> ), s. 6.      |                         |
| Re PARKER. DEARING v. BROOKS                        | 353                     | PRITCHARD v. PRITCHARD -                                | 344                     |
|                                                     |                         | 38 & 39 Vict. c. 55 ( <i>Public Health</i> ), ss. 4,    |                         |
| Re CONEY - - -                                      | 353                     | 13, 18, 264.                                            |                         |
| s. 25, sub-s. 10.                                   |                         | WHEATCROFT v. MATLOCK LOCAL                             |                         |
| Re ROWE - - -                                       | 188                     | BOARD - - -                                             | 374                     |
| s. 25, sub-s. 11.                                   |                         | s. 4, 150.                                              |                         |
| MANNERS v. MEW (No. 2) -                            | 263                     | AUSTERBERRY v. OLDHAM (MAYOR)                           | 173                     |
|                                                     |                         | s. 13.                                                  |                         |
| FOWKE v. DRAYCOTT. - -                              | 414                     | ACTON LOCAL BOARD v. BATTEN -                           | 374                     |
| s. 49.                                              |                         | ss. 39, 149, 264, 308.                                  |                         |
| Re BRADFORD - - -                                   | 311                     | SELLORS v. MATLOCK LOCAL BOARD                          | 372                     |
|                                                     |                         | ss. 76, 89.                                             |                         |
| Re GILBERT - - -                                    | 312                     | COLES v. FIBBENS - - -                                  | 369                     |
| s. 50.                                              |                         | s. 91, sub-s. vii.                                      |                         |
| BRASNETTS' CASE (No. 2) -                           | 316                     | WEEKES v. KING - - -                                    | 371                     |

|                                                       | Column<br>of<br>Digest. |                                                         | Column<br>of<br>Digest. |
|-------------------------------------------------------|-------------------------|---------------------------------------------------------|-------------------------|
| 38 & 39 Vict. c. 55 ( <i>Public Health</i> ), s. 112. |                         | 38 & 39 Vict. c. 91 ( <i>Trade Marks</i> ), s. 5.       |                         |
| BRAINTREE BOARD v. BOYTON -                           | 372                     | Re HYDE'S TRADE MARK -                                  | 465                     |
| — s. 117.                                             |                         | — ss. 5, 6.                                             |                         |
| WAYE v. THOMPSON -                                    | 375                     | BLAIR v. STOCK -                                        | 470                     |
| — ss. 144, 216, 217.                                  |                         | — s. 6.                                                 |                         |
| DYSON v. GREETLAND LOCAL BOARD                        | 174                     | Re WALKDEN AERATED WATER CO.                            | 465                     |
| — s. 150.                                             |                         | — ss. 6, 9.                                             |                         |
| LIGHTBOUND v. BEBINGTON LOCAL                         |                         | Re ROSING'S APPLICATION -                               | 464                     |
| BOARD -                                               | 374                     | — ss. 6, 10.                                            |                         |
| — ss. 150, 174, 257.                                  |                         | Re JONES' TRADE MARK -                                  | 466                     |
| BOURNEMOUTH COMMISSIONERS v.                          |                         | — s. 10.                                                |                         |
| WATTS -                                               | 369                     | Re CHORLTON AND DUGDALE'S                               |                         |
| — s. 152.                                             |                         | TRADE MARK -                                            | 462                     |
| SAUNDERS v. BRADING HARBOUR                           |                         | —                                                       |                         |
| IMPROVEMENT CO. -                                     | 453                     | Re ANDERSON'S TRADE MARK -                              | 463                     |
| — ss. 155, 158, sched. I., r. 29, sched.              |                         | 38 & 39 Vict. c. 92 ( <i>Agricultural Holdings</i> ),   |                         |
| II., part I., r. 65, part II., r. 2.                  |                         | ss. 9, 13, 15, 20.                                      |                         |
| NEWHAVEN LOCAL BOARD v. NEW-                          |                         | SMITH v. ACOCK -                                        | 209                     |
| HAVEN SCHOOL BOARD -                                  | 374                     | 39 Vict. c. 6 ( <i>Marine Insurance</i> ), s. 2.        |                         |
| — s. 157.                                             |                         | BARROW, &C., INSURANCE CO. v.                           |                         |
| RUDLAND v. SUNDERLAND (MAYOR)                         | 371                     | ASHBURNER -                                             | 196                     |
| — ss. 174, 175, 189, 193, 265.                        |                         | 39 & 40 Vict. c. 33 ( <i>Trade Mark</i> ), s. 1.        |                         |
| BURGESS v. CLARK -                                    | 372                     | EDWARDS v. DENNIS -                                     | 489                     |
| — ss. 174, 193.                                       |                         | 39 & 40 Vict. c. 59 ( <i>Appellate Jurisdiction</i> ),  |                         |
| MELLIS v. SHIRLEY AND FREE-                           |                         | s. 20.                                                  |                         |
| MANTLE LOCAL BOARD -                                  | 370                     | WATERHOUSE v. GILBERT -                                 | 339                     |
| — ss. 179, 180, 308.                                  |                         | 39 & 40 Vict. c. 61 ( <i>Poor Law—Divided</i>           |                         |
| BRIERLEY HILL LOCAL BOARD v.                          |                         | <i>Parishes</i> ).                                      |                         |
| PEARSALL -                                            | 369                     | EDMONTON GUARDIANS v. GUAR-                             |                         |
| — s. 193.                                             |                         | DIANS OF ST. MARY, ISLINGTON                            | 293                     |
| TODD v. ROBINSON (No. 2) -                            | 372                     | — s. 34.                                                |                         |
| — s. 256.                                             |                         | MERTHYR TYDVIL GUARDIANS v.                             |                         |
| SANDGATE LOCAL BOARD v. PLEDGE                        | 203                     | STEPNEY UNION -                                         | 292                     |
| 38 & 39 Vict. c. 60 ( <i>Friendly Societies</i> ),    |                         | 39 & 40 Vict. c. 79 ( <i>Education</i> ).               |                         |
| s. 16, sub-s. 7.                                      |                         | HUNTER v. JOHNSON -                                     | 142                     |
| CARLISLE CITY AND DISTRICT BANK-                      |                         | 40 & 41 Vict. c. 18 ( <i>Settled Estates</i> ), s. 50.  |                         |
| ING CO. v. THOMPSON -                                 | 64                      | Re HARRIS'S SETTLED ESTATES -                           | 402                     |
| 38 & 39 Vict. c. 63 ( <i>Food and Drugs</i> ), s. 6.  |                         | —                                                       |                         |
| KNIGHT v. BOWERS -                                    | 7                       | RIDDELL v. ERRINGTON -                                  | 401                     |
| —                                                     |                         | —                                                       |                         |
| LANE v. COLLINS -                                     | 7                       | Re ARABIN'S TRUSTS -                                    | 402                     |
| 38 & 39 Vict. c. 77 ( <i>Judicature</i> ).            |                         | 40 & 41 Vict. c. 25 ( <i>Solicitor</i> ), s. 6.         |                         |
| JOSEPH v. LYONS -                                     | 55                      | Re JAMES -                                              | 437                     |
| — s. 10.                                              |                         | — s. 23, sched. II.                                     |                         |
| MERSEY STEEL AND IRON CO. v.                          |                         | Re CHAFFERS -                                           | 447                     |
| NAYLOR & CO. -                                        | 111                     | 40 & 41 Vict. c. 26 ( <i>Companies</i> ), G. O.         |                         |
| — s. 18.                                              |                         | March, 1868, r. 5.                                      |                         |
| AHIER v. AHIER -                                      | 333                     | Re TAMBRACHERRY ESTATES CO. -                           | 93                      |
| 38 & 39 Vict. c. 90 ( <i>Employers and Work-</i>      |                         | —                                                       |                         |
| <i>men</i> ), ss. 1 (i.), 2 (i.)                      |                         | Re CANADA NORTH WESTERN LAND                            |                         |
| MARTIN v. CONNAH'S QUAY ALKALI                        |                         | Co. -                                                   | 93                      |
| Co. -                                                 | 240                     | — ss. 3, 4.                                             |                         |
| 38 & 39 Vict. c. 91 ( <i>Trade Marks</i> ), ss. 2-5,  |                         | Re LONDON AND CITY LAND AND                             |                         |
| 107.                                                  |                         | BUILDING CO. -                                          | 93                      |
| EDWARDS v. DENNIS -                                   | 469                     | — s. 4 (ii.)                                            |                         |
| — s. 5.                                               |                         | Re RIVER PLATE FRESH MEAT CO.                           | 93                      |
| Re RIVIERE'S TRADE MARK -                             | 468                     | 41 Vict. c. 15 ( <i>Customs</i> ), s. 13, sub-ss. 1, 2. |                         |
| —                                                     |                         | CLERK v. BRITISH LINEN CO. -                            | 389                     |
| Re WOOD'S TRADE MARK -                                | 469                     | — s. 13, sub-s. 2.                                      |                         |
|                                                       |                         | WEGUELIN v. WYATT -                                     | 388                     |

## TABLE OF STATUTES.

lxxxi

|                                                                                                                                 | Column<br>of<br>Digest. |                                                                                                     | Column<br>of<br>Digest. |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----------------------------------------------------------------------------------------------------|-------------------------|
| 41 Vict. c. 16 ( <i>Factories</i> ), ss. 11, 12, 26, 96.<br>SHARP v. PATH HEAD SPINNING CO.                                     | 243                     | 43 & 44 Vict. c. 16 ( <i>Merchant Seamen</i> ), s. 4.<br>THE "RAINBOW" -                            | 434                     |
| 41 & 42 Vict. c. 15 ( <i>Revenue</i> ), s. 12.<br>GILLATT v. COLQUHOUN -                                                        | 388                     | 43 & 44 Vict. c. 35 ( <i>Wild Birds</i> ), s. 3.<br>REG. v. GILHAM -                                | 501                     |
| 41 & 42 Vict. c. 26 ( <i>Registration</i> ), s. 28.<br>FORD v. HOAR -                                                           | 280                     | 43 & 44 Vict. c. 42 ( <i>Employers' Liability</i> ).<br>ROBERTSON v. RUSSELL -                      | 242                     |
| — — — — sub-s. 12.<br>LYNCH v. WHEATLEY -                                                                                       | 280                     | — — — — s. 1.<br>MARTIN v. CONNAH'S QUAY ALKALI<br>CO. -                                            | 240                     |
| — — — — sub-s. 2, and sched. Form I.<br>1, 2.<br>BOLLEN v. SOUTHALL -                                                           | 279                     | — — — — sub-s. 3.<br>MILLWARD v. MIDLAND RY. CO. -                                                  | 241                     |
| — — — — sub-s. xi.<br>FORD v. SMERDON -                                                                                         | 279                     | — — — —<br>DOLAN v. ANDERSON -                                                                      | 241                     |
| — — — — sub-s. xiii.<br>DASHWOOD v. AYLES -                                                                                     | 278                     | — — — — ss. 4, 7.<br>THOMSON v. ROBERTSON -                                                         | 242                     |
| 41 & 42 Vict. c. 31 ( <i>Bills of Sale</i> ).<br>Re CUNNINGHAM & CO., LIMITED -                                                 | 57                      | — — — — s. 6.<br>REG. v. JUDGE OF CITY OF LONDON<br>COURT -                                         | 243                     |
| — — — — ss. 3, 4.<br>Ex parte CLOSE. Re HALL -                                                                                  | 57                      | — — — — s. 6.<br>McEVoy v. WATERFORD CO. -                                                          | 242                     |
| — — — — ss. 4, 10.<br>Ex parte TURQUAND. Re PARKER<br>(No. 3.) -                                                                | 57                      | 43 & 44 Vict. c. 47 ( <i>Ground Game</i> ), s. 1 (i).<br>STUART v. MURRAY -                         | 171                     |
| — — — — s. 8.<br>COOKSON v. SWIRE -                                                                                             | 56                      | — — — — s. 5 (i).<br>HASSARD v. CLARK -                                                             | 171                     |
| — — — —<br>Ex parte ALLAM. Re MUNDAY -                                                                                          | 54                      | 44 Vict. c. 12 ( <i>Customs</i> ), s. 24.<br>WEGUELIN v. WYATT -                                    | 388                     |
| — — — — s. 10.<br>THROSSELL v. MARSH -                                                                                          | 53                      | 44 & 45 Vict. c. 24 ( <i>Summary Jurisdiction<br/>Process</i> ), ss. 4, 6.<br>BERKLEY v. THOMPSON - | 46                      |
| 41 & 42 Vict. c. 32 ( <i>Metropolis Management</i> ),<br>ss. 14, 16.<br>BLASHILL v. CHAMBERS -                                  | 251                     | 44 & 45 Vict. c. 41 ( <i>Conveyancing</i> ), s. 3, sub-s.<br>4, 6.<br>Re MOODY & YATES' CONTRACT -  | 493                     |
| — — — — s. 16, by-law 5.<br>JOSOLYNE v. MEESON -                                                                                | 251                     | — — — — s. 3, sub-ss. 3, 11.<br>NOTTINGHAM PATENT BRICK AND<br>TILE CO. v. BUTLER -                 | 486                     |
| 41 & 42 Vict. c. 74 ( <i>C. D. Animals</i> ).<br>WILLIAMS v. G. W. RY. CO. -                                                    | 108                     | — — — — sub-s. 6.<br>Re JOHNSON & TUSTIN -                                                          | 492                     |
| — — — — s. 50.<br>BRYSON v. RUSSELL -                                                                                           | 107                     | — — — — s. 5.<br>SPAIN v. MOWATT -                                                                  | 487                     |
| 41 & 42 Vict. c. 77 ( <i>Highways</i> ), s. 13.<br>NEWTON-IN-MAKERFIELD IMPROVE-<br>MENT COMMISSIONERS v. LANCAS-<br>TER, JJ. - | 175                     | — — — — s. 14 (1).<br>CRONIN v. ROGERS -                                                            | 216                     |
| — — — — ss. 13, 38.<br>OVER DARWEN v. LANCASTER, JJ. -                                                                          | 175                     | — — — — ss. 14 (i.) (ii.) (iii.), 67.<br>SCOTT v. BROWN & CO. -                                     | 216                     |
| — — — — s. 15.<br>REG. v. LOCAL GOVERNMENT BOARD -                                                                              | 173                     | — — — — ss. 14, 18 (xvii.).<br>AYLING v. MERCER -                                                   | 59                      |
| — — — — s. 23.<br>LAPTHORN v. HARVEY -                                                                                          | 176                     | — — — — s. 17.<br>CLAPHAM v. ANDREWS -                                                              | 255                     |
| — — — — s. 33.<br>TONBRIDGE HIGHWAY BOARD v.<br>SEVENOAKS HIGHWAY BOARD -                                                       | 176                     | — — — — ss. 19, 24.<br>BAYLY v. WENT -                                                              | 207                     |
| 42 & 43 Vict. c. 49 ( <i>Summary Jurisdiction</i> ),<br>s. 38.<br>SANDGATE LOCAL BOARD v. PLEDGE -                              | 203                     | — — — — s. 22.<br>SAUNDERS v. KENT -                                                                | 255                     |
| 42 & 43 Vict. c. 59 ( <i>Metropolis Management</i> ),<br>ss. 2, 4.<br>SNELLING v. PULLING -                                     | 312                     | — — — — s. 25 (ii.).<br>OLDHAM v. STRINGER -                                                        | 255                     |
| 42 & 43 Vict. c. 76 ( <i>Companies</i> ), s. 5.<br>Re MORRIS -                                                                  | 512                     | — — — —<br>GREEN v. BIGGS -                                                                         | 255                     |
|                                                                                                                                 |                         | — — — — s. 30 (1).<br>Re RACKSTRAW'S TRUSTS -                                                       | 481                     |
|                                                                                                                                 |                         | — — — — s. 31.<br>Re SHAFTO'S TRUSTS -                                                              | 473                     |
|                                                                                                                                 |                         | — — — — ss. 31, 33.<br>CECIL v. LANGDON -                                                           | 473                     |

|                                                        | Column<br>of<br>Digest. |                                                   | Column<br>of<br>Digest. |
|--------------------------------------------------------|-------------------------|---------------------------------------------------|-------------------------|
| 44 & 45 Vict. c. 41, s. 39.                            |                         | 45 & 46 Vict. c. 8, s. 21, sub-s. vii., 25,       |                         |
| Re WRIGHT'S TRUSTS -                                   | 417                     | sub-ss. i., iii., x., xi., xii., 37.              |                         |
| — s. 43.                                               |                         | Re HOUGHTON ESTATE -                              | 404                     |
| Re DICKSON. HILL v. GRANT -                            | 190                     | ss. 21, 25, 26, 53.                               |                         |
| — (i.) (ii.).                                          |                         | Re KNATCHBULL'S SETTLED ES-                       | 404                     |
| Re PITT'S SETTLEMENT -                                 | 190                     | TATE -                                            |                         |
| — s. 65.                                               |                         | — s. 21, sub-s. ii. 37, 53.                       |                         |
| Re CHAPMAN & HOBBS -                                   | 112                     | Re DUKE OF MARLBOROUGH'S                          |                         |
| 44 & 45 Vict. c. 44 ( <i>Solicitors' Remunera-</i>     |                         | SETTLEMENT -                                      | 403                     |
| <i>tion</i> ).                                         |                         | — ss. 21, 25 (xi.).                               |                         |
| Re R. A. PARKER AND OTHERS -                           | 442                     | BROADWATER ESTATE -                               | 403                     |
| —                                                      |                         | ss. 22, 32, 58, cl. 1 (i.).                       |                         |
| Re MERCHANT TAYLORS CO. -                              | 441                     | Re BOLTON ESTATES ACT -                           | 404                     |
| —                                                      |                         | — s. 25 (iv.).                                    |                         |
| Re WILSON A LUNATIC -                                  | 440                     | Re BETHLEHEM AND BRIDEWELL                        |                         |
| ss. 2, 7                                               |                         | HOSPITALS -                                       | 219                     |
| FLEMING v. HARDCASTLE -                                | 442                     | — s. 32.                                          |                         |
| — s. 2 (c).                                            |                         | Re ARABIN'S TRUSTS -                              | 402                     |
| HUMPHREYS v. JONES -                                   | 442                     | — s. 34.                                          |                         |
| — s. 7.                                                |                         | COTTRELL v. COTTRELL -                            | 405                     |
| Re DENNE -                                             | 441                     | — ss. 51, 58, sub-s. 1.                           |                         |
| — s. 7 and Rules.                                      |                         | Re PAGET'S SETTLED ESTATE -                       | 406                     |
| Re FIELD -                                             | 442                     | — s. 53.                                          |                         |
| — s. 8.                                                |                         | SEBRIGHT v. THORNTON -                            | 407                     |
| Re LINDERWICK -                                        | 447                     | — s. 58 (ii.), 60                                 |                         |
| 44 & 45 Vict. c. 49 ( <i>Land Law (Ireland)</i> ),     |                         | Re JAMES'S SETTLED ESTATE -                       | 404                     |
| s. 58, sub-s. 3.                                       |                         | sub-ss. 4, 6.                                     |                         |
| WESTROFF v. ELLIGOTT -                                 | 199                     | Re HAZLE'S SETTLED ESTATE -                       | 407                     |
| 44 & 45 Vict. c. 58 ( <i>Army</i> ), s. 176, sub-s. 4. |                         | —                                                 |                         |
| Re WILLIAM FLINT -                                     | 14                      | CARDIGAN v. CURZON-HOWE -                         | 407                     |
| 44 & 45 Vict. c. 60 ( <i>Newspaper Libel</i> ), s. 3.  |                         | 45 & 46 Vict. c. 39 ( <i>Conveyancing</i> ), s. 3 |                         |
| YATES v. REG. -                                        | 125                     | (i.) (ii.).                                       |                         |
| 44 & 45 Vict. c. 68 ( <i>Judicature</i> ), s. 9.       |                         | GAINSBOROUGH v. DUNNING -                         | 492                     |
| AHIER v. AHIER -                                       | 333                     | — s. 5.                                           |                         |
| — s. 14.                                               |                         | Re PAINE'S TRUSTS -                               | 480                     |
| LINE v. WARREN -                                       | 268                     | — s. 6.                                           |                         |
| 45 Vict. c. 14 ( <i>Metropolis Management</i> ),       |                         | Re FISHER AND HASLETT -                           | 492                     |
| s. 13.                                                 |                         | 45 & 46 Vict. c. 43 ( <i>Bills of Sale</i> ).     |                         |
| METROPOLITAN BOARD OF WORKS                            |                         | Re CUNNINGHAM & CO., LIMITED -                    | 57                      |
| v. ANTHONY & CO. -                                     | 251                     | —                                                 |                         |
| 45 & 46 Vict. c. 38 ( <i>Settled Land</i> ), s. 2,     |                         | CLEMONSON v. TOWNSEND -                           | 54                      |
| sub-s. 1.                                              |                         | — s. 3.                                           |                         |
| Re KNOWLES'S SETTLED ESTATE -                          | 402                     | COOKSON v. SWIRE -                                | 56                      |
| — ss. 2 (v.) (vii.), 58, sub-s. 1 (vi.)                |                         | — ss. 4, 9.                                       |                         |
| (ix.).                                                 |                         | LEVY v. POLACK -                                  | 53                      |
| Re COOKE'S SETTLED ESTATE -                            | 407                     | — ss. 7, 9.                                       |                         |
| — s. 2, sub-s. 5, s. 56, sub-s. 2, s. 58,              |                         | Ex parte ALLAM. Re MUNDAY -                       | 52                      |
| sub-s. 1, clause ix.                                   |                         | — ss. 7, 9 and Sched.                             |                         |
| Re CLITHEROE ESTATE -                                  | 405                     | SIBLEY v. HIGGS -                                 | 54                      |
| — s. 2 (viii.), ss. 6, 7, 13, 18, 45,                  |                         | — s. 9.                                           |                         |
| 56, 61.                                                |                         | Ex parte CLOSE. Re HALL -                         | 5                       |
| Re BENTLEY -                                           | 403                     | — s. 9, Sched.                                    |                         |
| — s. 2, sub-ss. 5, 6, 10, cl. i., ss. 51,              |                         | THORP v. CREGEEN -                                | 5                       |
| 58, sub-s. 1, cls. vi., ix.                            |                         | 45 & 46 Vict. c. 50 ( <i>Municipal Corpora-</i>   |                         |
| Re ATKINSON -                                          | 406                     | <i>tions</i> ), s. 36.                            |                         |
| — s. 2, sub-s. 10, ss. 37, 58.                         |                         | REG. v. WIGAN (MAYOR) -                           | 26                      |
| Re CAENAC'S WILL -                                     | 408                     | — ss. 87, 88, 91, 93, 242, Sched. 3,              |                         |
| — ss. 6, 56 (ii.).                                     |                         | part 2; rr. 3, 10.                                |                         |
| Re MANSSEL'S SETTLED ESTATES -                         | 407                     | LINE v. WARREN -                                  | 238                     |

## TABLE OF STATUTES.

lxxxiii

|                                                                    | Column<br>of<br>Digest. |                                                       | Column<br>of<br>Digest |
|--------------------------------------------------------------------|-------------------------|-------------------------------------------------------|------------------------|
| 45 & 46 Vict. c. 57 ( <i>County Court: Costs</i> ),<br>s. 5.       |                         | 46 & 47 Vict. c. 52 ( <i>Bankruptcy</i> ), s. 4 (d.). |                        |
| HOWARD v. GRAVES - - -                                             | 75                      | RICHARDSON v. PRATT - - -                             | 21                     |
| 45 & 46 Vict. c. 61 ( <i>Bills of Exchange</i> ),<br>ss. 60, 82.   |                         | — s. 4 (i.) (f, h.)                                   |                        |
| BISSELL v. FOX - - -                                               | 19                      | <i>Ex parte</i> OASTLER. <i>Re</i> FRIED-             |                        |
| 45 & 46 Vict. c. 75 ( <i>Married Women's</i><br><i>Property</i> ). |                         | LANDER - - -                                          | 21                     |
| WELDON v. DE BATHE - - -                                           | 179                     | — s. 4 (g.)                                           |                        |
| —                                                                  |                         | <i>Ex parte</i> MOORE. <i>Re</i> FAITHFULL            | 20                     |
| LOWE v. FOX - - -                                                  | 238                     | —                                                     |                        |
| — s. 1.                                                            |                         | <i>Ex parte</i> BASAN. <i>Re</i> FOSTER -             | 20                     |
| <i>Re</i> ROBINSON. PINDAR v. ROBINSON                             | 321                     | — ss. 4, sub-s. i. (9), 5, 6, 105                     |                        |
| —                                                                  |                         | (sub-s. 3).                                           |                        |
| <i>Re</i> HARRIS' SETTLED ESTATE. -                                | 402                     | <i>Ex parte</i> DEARLE. <i>Re</i> HASTINGS            | 36                     |
| — s. 1 (i.)                                                        |                         | — s. 4 (i.) (h.).                                     |                        |
| <i>Re</i> BENTLEY - - -                                            | 403                     | <i>Re</i> WALSH - - -                                 | 21                     |
| — s. 1, sub-s. 2.                                                  |                         | — s. 7, iii.                                          |                        |
| <i>Re</i> ISAAC. JACOB v. ISAAC -                                  | 321                     | <i>Ex parte</i> ORAM. <i>Re</i> WATSON -              | 35                     |
| —                                                                  |                         | —                                                     |                        |
| WELDON v. WINSLOW - - -                                            | 346                     | <i>Ex parte</i> LENNOX. <i>Re</i> LENNOX -            | 41                     |
| — s. 1, sub-ss. 2, 3, 4, ss. 3, 12, 13.                            |                         | — s. 7, iv.                                           |                        |
| BUTLER v. BUTLER - - -                                             | 178                     | <i>Ex parte</i> HEYWORTH. <i>Re</i> RHODES            | 35                     |
| — s. 1, sub-ss. (3) (4).                                           |                         | — s. 9.                                               |                        |
| CONOLAN v. LEYLAND - - -                                           | 178                     | <i>Re</i> MANNING - - -                               | 40                     |
| — s. 1, sub-s. 4.                                                  |                         | — ss. 9, 10, 20, 21, 54, 56, 68, 70,                  |                        |
| TURNBULL v. FORMAN - - -                                           | 179                     | 121.                                                  |                        |
| —                                                                  |                         | <i>Ex parte</i> BOARD OF TRADE. <i>Ex</i>             |                        |
| <i>Re</i> SHAKESPEAR. DEAKIN v. LAKIN                              | 179                     | <i>parte</i> TURQUAND. <i>Re</i> PARKER               | 33                     |
| — ss. 1, 2.                                                        |                         | — ss. 9, 121.                                         |                        |
| RIDDELL v. ERRINGTON - - -                                         | 401                     | <i>Ex parte</i> STEWART (OFFICIAL RE-                 |                        |
| — ss. 1, 5.                                                        |                         | CEIVER). <i>Re</i> RYLEY - - -                        | 40                     |
| <i>Re</i> MARCH. MANDER v. HARRIS -                                | 181                     | — s. 17, sub-s. 4.                                    |                        |
| — ss. 1, 23.                                                       |                         | REG. v. REGISTRAR OF GREENWICH                        |                        |
| STAFFORD v. STAFFORD - - -                                         | 181                     | COUNTY COURT - - -                                    | 32                     |
| — s. 3.                                                            |                         | — s. 18.                                              |                        |
| <i>Ex parte</i> DISTRICT BANK OF                                   |                         | <i>Ex parte</i> CLARK. <i>Re</i> CLARK -              | 24                     |
| LONDON - - -                                                       | 38                      | —                                                     |                        |
| — s. 5.                                                            |                         | THORP v. DAKIN - - -                                  | 26                     |
| BAYNTON v. COLLINS - - -                                           | 179                     | — ss. 18, 28.                                         |                        |
| —                                                                  |                         | <i>Ex parte</i> YOUNG. <i>Re</i> YOUNG -              | 25                     |
| <i>Re</i> THOMPSON AND CURZON -                                    | 180                     | —                                                     |                        |
| —                                                                  |                         | <i>Ex parte</i> CAMPBELL. <i>Re</i> WALLACE           | 25                     |
| <i>Re</i> TUCKER. EMANUEL v. PARFITT                               | 180                     | — ss. 18, 28, sub-s. 31 (d).                          |                        |
| —                                                                  |                         | <i>Ex parte</i> ROGERS. <i>Re</i> ROGERS -            | 25                     |
| <i>Re</i> ADAME'S TRUSTS - - -                                     | 180                     | — ss. 18, 70.                                         |                        |
| —                                                                  |                         | <i>Re</i> TAYLOR. <i>Ex parte</i> BOARD OF            |                        |
| <i>Re</i> DIXON - - -                                              | 178                     | TRADE - - -                                           | 33                     |
| — ss. 5, 19.                                                       |                         | — s. 24.                                              |                        |
| <i>Re</i> QUEADE'S TRUSTS - - -                                    | 409                     | <i>Ex parte</i> BULLOCK - - -                         | 31                     |
| — ss. 11, 22.                                                      |                         | — ss. 27, 100.                                        |                        |
| <i>Re</i> SOUTAR'S POLICY TRUST -                                  | 179                     | REG. v. SURREY COUNTY COURT                           |                        |
| — s. 12.                                                           |                         | JUDGE - - -                                           | 117                    |
| HUNT v. HUNT - - -                                                 | 338                     | — ss. 27, 125.                                        |                        |
| 46 & 47 Vict. c. 49 ( <i>Statute Law Revision</i> ),<br>s. 5.      |                         | <i>Re</i> HEWITT. <i>Ex parte</i> HEWITT -            | 21                     |
| <i>Re</i> TWEEDY - - -                                             | 481                     | — s. 28.                                              |                        |
|                                                                    |                         | <i>Ex parte</i> SALAMAN. <i>In re</i> SALA-           |                        |
|                                                                    |                         | MAN - - -                                             | 28                     |
|                                                                    |                         | — s. 28, sub-s. 3 (e).                                |                        |
|                                                                    |                         | <i>Ex parte</i> WHITE. <i>Re</i> WHITE -              | 28                     |

|                                                             | Column<br>of<br>Digest. |                                                       | Column<br>of<br>Digest. |
|-------------------------------------------------------------|-------------------------|-------------------------------------------------------|-------------------------|
| 46 & 47 Vict. c. 52 ( <i>Bankruptcy</i> ), ss. 30, 40, 150. |                         | 46 & 47 Vict. c. 52, ss. 104, 121 (iii.), 127 (ii.)   |                         |
| Re ORIENTAL BANK CORPORATION                                |                         | <i>Ex parte</i> DALE - - -                            | 23                      |
| (No. 2) - - -                                               | 102                     | s. 121.                                               |                         |
| s. 37.                                                      |                         | <i>Ex parte</i> JENKINS - - -                         | 27                      |
| LINTON v. LINTON - - -                                      | 37                      | s. 121, r. 237 ii.                                    |                         |
| s. 38.                                                      |                         | Re HORNIBLOW - - -                                    | 42                      |
| <i>Ex parte</i> REID. Re GILLESPIE - -                      | 32                      | s. 125.                                               |                         |
| s. 44.                                                      |                         | Re WEAVER. HIGGS v. WEAVER -                          | 22                      |
| Re JENKINSON. <i>Ex parte</i> NOT-                          |                         | s. 125 (iv. v.)                                       |                         |
| TINGHAM, &C., BANK - - -                                    | 34                      | SENHOUSE v. MAWSON - - -                              | 22                      |
| <i>Ex parte</i> SULLY. Re WALLIS - -                        | 43                      | s. 135, Sched. 1, r. 14.                              |                         |
| s. 44 (iii.)                                                |                         | <i>Ex parte</i> MAGEE. Re MAGEE - -                   | 31                      |
| <i>Ex parte</i> TURQUAND. Re PARKER                         |                         | s. 142.                                               |                         |
| (No. 3) - - -                                               | 35                      | <i>Ex parte</i> ARDEN. In re ARDEN -                  | 23                      |
| NICHOLS TO NIXEY AND COLE-                                  |                         | s. 151.                                               |                         |
| CLOUGH - - -                                                | 24                      | <i>Ex parte</i> REYNOLDS. Re BARNETT                  | 24                      |
| COLONIAL BANK v. WHINNEY - -                                | 34                      | s. 153. App. Forms, 29, 30.                           |                         |
| ss. 44, 55, 168.                                            |                         | Re MANNING - - -                                      | 40                      |
| <i>Ex parte</i> MONKHOUSE. Re MAU-                          |                         | Sched. 2, r. 13.                                      |                         |
| GHAN - - -                                                  | 29                      | <i>Ex parte</i> ARDEN. - - -                          | 42                      |
| ss. 45, 46.                                                 |                         | 46 & 47 Vict. c. 57 ( <i>Patents</i> ).               |                         |
| <i>Ex parte</i> CROSTHWAITE. Re PEARCE                      | 42                      | Re MITCHELL & Co.'s TRADE MARK                        | 470                     |
| s. 46 (ii.)                                                 |                         | ss. 18, 19.                                           |                         |
| CURTIS v. WAINBROOK CO. - -                                 | 36                      | CROPPER v. SMITH (No. 3) - -                          | 288                     |
| ss. 46 (ii.), 168.                                          |                         | s. 25, cl. 4.                                         |                         |
| <i>Ex parte</i> WARREN. Re HOLLAND                          | 421                     | Re NEWTON'S PATENTS - - -                             | 286                     |
| s. 47 i. iii.                                               |                         | s. 26.                                                |                         |
| <i>Ex parte</i> HARVEY (No. 1) (No. 2)                      | 496                     | Re HADDAN'S (or HADDON'S)                             |                         |
| ss. 51, 121.                                                |                         | PATENT - - -                                          | 287                     |
| <i>Ex parte</i> ZERFASS. Re SANDWELL                        | 30                      | s. 32.                                                |                         |
| s. 55, sub-s. 4.                                            |                         | BARNEY v. UNITED TELEPHONE CO.                        | 286                     |
| <i>Ex parte</i> MACKAY. Re PAGE - -                         | 30                      | s. 47.                                                |                         |
| s. 55, sub-s. 6.                                            |                         | LE MAY v. WELCH - - -                                 | 115                     |
| <i>Ex parte</i> TURQUAND. Re PARKER                         | 30                      | ss. 51, 113.                                          |                         |
| s. 83.                                                      |                         | WITTMANN v. OPPENHEIM - -                             | 114                     |
| POOLEY'S TRUSTEE v. WHETHAM -                               | 322                     | s. 62.                                                |                         |
| ss. 93, 94, 99, 127, 169 (iii.)                             |                         | Re "WHITE ROSE" TRADE MARK                            | 464                     |
| <i>Ex parte</i> EDWARDS - - -                               | 32                      | ss. 63, 76, 90-113.                                   |                         |
| ss. 95, 97.                                                 |                         | Re HAYWARD'S TRADE MARKS -                            | 466                     |
| <i>Ex parte</i> MAY. Re BRIGHTMORE                          | 41                      | s. 64.                                                |                         |
| ss. 100, 102, 168.                                          |                         | SLAZENGER v. MALINGS - - -                            | 463                     |
| <i>Ex parte</i> REYNOLDS. Re BARNETT                        | 32                      | Re ANDERSON'S TRADE MARK -                            | 463                     |
| s. 102.                                                     |                         | s. 64, c.                                             |                         |
| <i>Ex parte</i> SERJEANT. Re SANDERS                        | 116                     | Re FRIEDLANDER'S TRADE MARK                           | 463                     |
| s. 102, sub-s. 5, 162 (ii.)                                 |                         | s. 64, c.                                             |                         |
| <i>Ex parte</i> BOARD OF TRADE. Re                          |                         | TAPLEY AND SMITH'S APPLICATION                        | 463                     |
| CHUDLEY - - -                                               | 43                      | ss. 65, 72.                                           |                         |
| ss. 102, s. 162 (ii.)                                       |                         | Re LYNDON'S APPLICATION - -                           | 465                     |
| <i>Ex parte</i> BOARD OF TRADE. Re                          |                         | ss. 74, 76, 90.                                       |                         |
| HARVEY - - -                                                | 43                      | Re WRAGG'S TRADE MARK - -                             | 467                     |
| s. 103 (iv. v.)                                             |                         | ss. 76, 90, 113.                                      |                         |
| <i>Ex parte</i> ANDREWS. Re ANDREWS                         | 41                      | LLOYD v. BOTTOMLEY - - -                              | 467                     |
| ss. 103, 104.                                               |                         | s. 85.                                                |                         |
| GENESE v. LASCELLES - - -                                   | 22                      | DE OTADUY'S TRADE MARK - -                            | 470                     |
|                                                             |                         | 46 & 47 Vict. c. 61 ( <i>Agricultural Holdings</i> ), |                         |
|                                                             |                         | ss. 1, 5, 7, 17, 62.                                  |                         |
|                                                             |                         | SMITH v. ACOCK - - -                                  | 209                     |
|                                                             |                         | ss. 7, 8, 9, 57.                                      |                         |
|                                                             |                         | GASLIGHT CO. v. HOLLOWAY - -                          | 209                     |

## TABLE OF STATUTES.

lxxxv

|                                                                 | Column<br>of<br>Digest. |                                                                 | Column<br>of<br>Digest |
|-----------------------------------------------------------------|-------------------------|-----------------------------------------------------------------|------------------------|
| 46 & 47 Vict. c. 61 ( <i>Agricultural Holdings</i> ),<br>s. 33. |                         | 46 & 47 Vict. c. 61 ( <i>Judicature</i> ), s. 14.               |                        |
| BARLOW v. TEAL - - -                                            | 217                     | Re EDWARDS - - -                                                | 342                    |
| — s. 45.                                                        |                         | — s. 18.                                                        |                        |
| LONDON AND YORKSHIRE BANK v.                                    |                         | WEBSTER v. ARMSTRONG - -                                        | 146                    |
| BELTON - - -                                                    | 208                     | — c. 70 ( <i>Municipal Elections</i> ), ss. 14, 20.             |                        |
| — ss. 52, 61.                                                   |                         | Ex parte CLARK - - -                                            | 269                    |
| Ex parte SERJEANT - - -                                         | 207                     | — ss. 16, 20.                                                   |                        |
| 47 & 48 Vict. c. 9 ( <i>Bankruptcy</i> ).                       |                         | Ex parte PERRY - - -                                            | 269                    |
| Ex parte PAYTON - - -                                           | 22                      | 48 Vict. c. 3 ( <i>Representation of the People</i> ),<br>s. 3. |                        |
| 47 & 48 Vict. c. 18 ( <i>Settled Land</i> ), s. 5.              |                         | STRIBLING v. HALSE - - -                                        | 281                    |
| Re BENTLEY - - -                                                | 403                     | — — —                                                           |                        |
| — s. 7.                                                         |                         | ADAMS v. FOX - - -                                              | 280                    |
| Re HOUGHTON ESTATE - - -                                        | 404                     | — ss. 3, 91 (ix.)                                               |                        |
|                                                                 |                         | ATKINSON v. COLLARD - - -                                       | 281                    |





## TABLE OF RULES OF COURT.

|                                                                                       | Column<br>of<br>Digest. |
|---------------------------------------------------------------------------------------|-------------------------|
| <b>RULES OF THE SUPREME COURT, 1875:—</b>                                             |                         |
| Order XXXVI., r. 22a. PERKINS v. DANGERFIELD - - - - -                                | 344                     |
| Order XL., r. 4. - - - - -                                                            | 344                     |
| Order LV., r. 1. <i>Re</i> M'CLELLAN - - - - -                                        | 312                     |
| Order LVIII., r. 5a. PERKINS v. DANGERFIELD - - - - -                                 | 344                     |
| <b>RULES OF THE SUPREME COURT, 1883:—</b>                                             |                         |
| Order I., r. 1. <i>Re</i> FAWSITT - - - - -                                           | 313                     |
| Order II., r. 1. <i>Re</i> FAWSITT - - - - -                                          | 313                     |
| ----- r. 4. YORKSHIRE TANNERY AND BOOT MANUFACTORY v. EGLINTON CHEMICAL CO. - - - - - | 360                     |
| Order VI., rr. 1, 2. FORD v. SHEPHARD - - - - -                                       | 362                     |
| Order IX., rr. 2, 15. DAVIES v. LOUND - - - - -                                       | 362                     |
| ----- r. 8. NUTTER & CO. v. MESSAGERIES MARITIMES DE FRANCE - - - - -                 | 360                     |
| ----- rr. 11, 12. THE "SOLIS" - - - - -                                               | 309                     |
| Order XI., r. 1. LISBON, &C., GOLD FIELDS v. HEDDLE - - - - -                         | 361                     |
| ----- (b) (e). AGNEW v. USHER - - - - -                                               | 362                     |
| ----- (f). SOCIÉTÉ GÉNÉRALE DE PARIS v. DREYFUS BROTHERS - - - - -                    | 360                     |
| ----- TOZIER v. HAWKINS - - - - -                                                     | 361                     |
| ----- (g). STEAMSHIP THANEMORE LIMITED v. THOMPSON - - - - -                          | 361                     |
| ----- 2, 4. YORKSHIRE TANNERY AND BOOT MANUFACTORY v. EGLINTON CHEMICAL CO. - - - - - | 360                     |
| ----- rr. 48, 52, 53. EDEN v. WEARDALE IRON AND COAL CO. - - - - -                    | 357                     |
| Order XII., rr. 11, 12. EDELL v. CAVE - - - - -                                       | 360                     |
| ----- r. 15. ADAM v. TOWNEND - - - - -                                                | 340                     |
| Order XIII., r. 2. FORD v. MIESCKE - - - - -                                          | 362                     |
| ----- r. 3. WEBSTER v. MYER - - - - -                                                 | 341                     |
| ----- rr. 12, 13. THE "SOLIS" - - - - -                                               | 309                     |
| Order XV. <i>Re</i> MICHAEL - - - - -                                                 | 336                     |
| ----- r. 1. BLAKE v. HARVEY - - - - -                                                 | 341                     |
| ----- <i>Re</i> GYHON. ALLEN v. TAYLOR - - - - -                                      | 304                     |
| ----- rr. 1, 2. SMITH v. DAVIES - - - - -                                             | 257                     |
| Order XVI., r. 2. GANDY v. GANDY - - - - -                                            | 184                     |
| ----- r. 11. DRAGE v. HARTOPP - - - - -                                               | 345                     |
| ----- HOUSE PROPERTY, &C., CO. v. H. P. HORSE NAIL CO. - - - - -                      | 345                     |
| ----- JACKSON v. KRÜGER - - - - -                                                     | 345                     |
| ----- WALCOTT v. LYONS - - - - -                                                      | 345                     |
| ----- r. 18. <i>Re</i> ISAAC. JACOB v. ISAAC - - - - -                                | 321                     |
| ----- rr. 22, 24, 26. <i>Re</i> LEWIN - - - - -                                       | 347                     |
| ----- rr. 24, 27, 31. CARSON v. PICKERSGILL - - - - -                                 | 347                     |

**RULES OF THE SUPREME COURT, 1883—continued.**

|                                                                        |     |
|------------------------------------------------------------------------|-----|
| Order XVI., rr. 30, 31. MARTINSON v. CLOWES - - - - -                  | 448 |
| ----- r. 40. <i>Re</i> YOUNGS - - - - -                                | 152 |
| ----- r. 46. PEAT v. GOTT - - - - -                                    | 257 |
| ----- r. 48. CARSHORE v. N. E. RY. CO. - - - - -                       | 357 |
| Order XVII., rr. 4, 5. POOLEY'S TRUSTEE v. WHETHAM - - - - -           | 322 |
| ----- r. 10. LE BLOND v. CURTIS - - - - -                              | 359 |
| Order XVIII., r. 2. CLARK v. WRAY - - - - -                            | 339 |
| ----- HOAR v. LOE - - - - -                                            | 339 |
| ----- RUSHBROOKE v. FARLEY - - - - -                                   | 339 |
| ----- WILMOTT v. FREEHOLD HOUSE PROPERTY CO. (No. 1) - - - - -         | 351 |
| Order XIX., r. 3. EDEN v. WEARDALE IRON AND COAL CO. - - - - -         | 357 |
| ----- MERSEY STEEL AND IRON CO. v. NAYLOR & CO. - - - - -              | 111 |
| ----- r. 6. WHYTE v. AHRENS - - - - -                                  | 327 |
| ----- rr. 6, 7. <i>Re</i> ANSTICE - - - - -                            | 350 |
| ----- r. 13. GARDNER v. TAPLING - - - - -                              | 343 |
| ----- r. 27. <i>Re</i> MILLER & MILLER - - - - -                       | 440 |
| ----- WILMOTT v. FREEHOLD HOUSE PROPERTY CO. (No. 1) - - - - -         | 351 |
| Order XX., r. 4. -----                                                 | 351 |
| Order XXI., r. 15. FENDALL v. O'CONNELL (No. 1) - - - - -              | 350 |
| ----- rr. 21-23. HAMPDEN v. WALLIS (No. 1) - - - - -                   | 315 |
| Order XXII., rr. 5, 6. SAVAGE v. PAYNE - - - - -                       | 348 |
| ----- rr. 6, 7. McILWRAITH v. GREEN - - - - -                          | 348 |
| Order XXV., rr. 1, 2, 3. O'BRIEN v. TYSSEN - - - - -                   | 352 |
| ----- r. 2. LONDON, CHATHAM & DOVER RY. CO. v. S. E. RY. CO. - - - - - | 358 |
| ----- PERCIVAL v. DUNN - - - - -                                       | 352 |
| ----- WILMOTT v. FREEHOLD HOUSE PROPERTY CO. (No. 1) - - - - -         | 351 |
| ----- rr. 2, 4. BODDINGTON v. REES - - - - -                           | 351 |
| ----- r. 4. JENKINS v. REES - - - - -                                  | 352 |
| ----- JOHNSTON v. JOHNSTON - - - - -                                   | 418 |
| ----- METROPOLITAN BANK v. POOLEY - - - - -                            | 70  |
| Order XXVI., r. 1. GARDNER v. TAPLING - - - - -                        | 343 |
| Order XXVII., r. 15. WALTER v. JAMES - - - - -                         | 359 |
| Order XXVIII., r. 1. RUSHBROOKE v. FARLEY - - - - -                    | 339 |
| ----- <i>Re</i> TRUFORT - - - - -                                      | 309 |
| ----- rr. 1, 3. CLARK v. WRAY - - - - -                                | 339 |
| ----- r. 11. BLAKE v. HARVEY - - - - -                                 | 341 |
| Order XXX., r. 1. WHEELER v. UNITED KINGDOM TELEPHONE CO. - - - - -    | 351 |
| Order XXXI., r. 1. <i>Re</i> HADDAN'S PATENT - - - - -                 | 287 |
| ----- JONES v. RICHARDS - - - - -                                      | 329 |
| ----- r. 6. THE "WHICKHAM" - - - - -                                   | 328 |
| ----- r. 11. LITCHFIELD v. JONES (No. 2) - - - - -                     | 329 |
| ----- r. 12. DYKE v. STEPHENS - - - - -                                | 326 |
| ----- rr. 12, 14. PEARCE v. FOSTER - - - - -                           | 327 |
| ----- rr. 12, 20. WHYTE v. AHRENS - - - - -                            | 327 |
| ----- r. 21. CARDWELL v. TOMLINSON - - - - -                           | 344 |
| Order XXXII., r. 6. PORRETT v. WHITE - - - - -                         | 348 |

## TABLE OF RULES.

lxxxix

Column  
of  
Digest.

## RULES OF THE SUPREME COURT, 1883—continued.

|                         |                                                                          |   |   |   |   |   |   |   |     |
|-------------------------|--------------------------------------------------------------------------|---|---|---|---|---|---|---|-----|
| Order XXXIII., r. 2.    | GARNHAM v. SKIPPER                                                       | - | - | - | - | - | - | - | 303 |
| Order XXXV., r. 16.     | Re EBERSLEY'S HOTEL CO.                                                  | - | - | - | - | - | - | - | 357 |
| Order XXXVI., r. 1.     | PHILIPS v. BEALE                                                         | - | - | - | - | - | - | - | 360 |
|                         | POWELL v. COBB                                                           | - | - | - | - | - | - | - | 358 |
| r. 3.                   | GREEN v. BENNETT                                                         | - | - | - | - | - | - | - | 359 |
| rr. 3, 6.               | GARDNER v. JAY                                                           | - | - | - | - | - | - | - | 358 |
| rr. 4, 6.               | OLD MILL CO. v. DUKINFIELD LOCAL BOARD                                   | - | - | - | - | - | - | - | 358 |
| rr. 4, 6, 7 a.          | THE "TEMPLE BAR"                                                         | - | - | - | - | - | - | - | 358 |
| rr. 4, 6, 7.            | TROWER v. LAW LIFE ASSURANCE SOCIETY                                     | - | - | - | - | - | - | - | 358 |
| r. 6.                   | OCEAN STEAMSHIP CO. v. ANDERSON, TRITTON & CO.                           | - | - | - | - | - | - | - | 357 |
| r. 7a.                  | LONDON AND LANCASHIRE FIRE INSURANCE CO. v. BRITISH AMERICAN ASSOCIATION | - | - | - | - | - | - | - | 354 |
| r. 12.                  | WILMOTT v. FREEHOLD HOUSE PROPERTY CO.                                   | - | - | - | - | - | - | - | 320 |
|                         | SAUNDERS v. PAWLEY                                                       | - | - | - | - | - | - | - | 359 |
| r. 33.                  | WALTER v. JAMES                                                          | - | - | - | - | - | - | - | 359 |
|                         | VINT v. HUDSPITH (No. 1)                                                 | - | - | - | - | - | - | - | 313 |
| r. 39.                  | PERKINS v. DANGERFIELD                                                   | - | - | - | - | - | - | - | 344 |
| Order XXXVII., r. 5.    | LAWSON v. VACUUM BRAKE CO.                                               | - | - | - | - | - | - | - | 336 |
| rr. 9, 13, 20, 21.      | Re BAKER. CONNELL v. BAKER                                               | - | - | - | - | - | - | - | 335 |
| rr. 12, 45.             | Ex parte OFFOR                                                           | - | - | - | - | - | - | - | 336 |
| r. 21.                  | BACKHOUSE v. ALCOCK                                                      | - | - | - | - | - | - | - | 335 |
| r. 22.                  | MANSEL v. CLANRICARDE                                                    | - | - | - | - | - | - | - | 335 |
| Order XXXVIII., r. 1.   | LUMB v. OSBORN                                                           | - | - | - | - | - | - | - | 335 |
| r. 6.                   | FORD v. MIESCKE                                                          | - | - | - | - | - | - | - | 362 |
| r. 11.                  | MILLER & MILLER                                                          | - | - | - | - | - | - | - | 440 |
| r. 13.                  | Re LONGSTAFFE                                                            | - | - | - | - | - | - | - | 336 |
| r. 28.                  | MANSEL v. CLANRICARDE                                                    | - | - | - | - | - | - | - | 335 |
|                         | BACKHOUSE v. ALCOCK                                                      | - | - | - | - | - | - | - | 335 |
|                         | Re BAKER. CONNELL v. BAKER                                               | - | - | - | - | - | - | - | 335 |
| Order XXXIX., rr. 3, 4. | PRITCHARD v. PRITCHARD                                                   | - | - | - | - | - | - | - | 344 |
| Order XL., rr. 3, 5.    | PERKINS v. DANGERFIELD                                                   | - | - | - | - | - | - | - | 344 |
| r. 5.                   | ROBINSON v. TUCKER                                                       | - | - | - | - | - | - | - | 338 |
| Order XLI., r. 5.       | HAMPDEN v. WALLIS (No. 1)                                                | - | - | - | - | - | - | - | 315 |
|                         | SELOUS v. CROYDON RURAL AUTHORITY                                        | - | - | - | - | - | - | - | 355 |
| Order XLII., rr. 1, 17. | Re —, A SOLICITOR                                                        | - | - | - | - | - | - | - | 447 |
| rr. 4, 28.              | Re CONEY. CONEY v. BENNETT                                               | - | - | - | - | - | - | - | 353 |
| rr. 6, 8, 22, 23.       | FELLOWS v. THORNTON                                                      | - | - | - | - | - | - | - | 314 |
| r. 30.                  | MORTIMER v. WILSON                                                       | - | - | - | - | - | - | - | 454 |
| r. 31.                  | SELOUS v. CROYDON RURAL SANITARY AUTHORITY                               | - | - | - | - | - | - | - | 355 |
| r. 32.                  | COWAN v. CARLILL                                                         | - | - | - | - | - | - | - | 314 |
| Order XLIII., r. 6.     | SELOUS v. CROYDON RURAL SANITARY AUTHORITY                               | - | - | - | - | - | - | - | 355 |
| Order XLV., r. 1.       | BICE v. JARVIS                                                           | - | - | - | - | - | - | - | 314 |
|                         | FELLOWS v. THORNTON                                                      | - | - | - | - | - | - | - | 314 |
| r. 3.                   | COWAN v. CARLILL                                                         | - | - | - | - | - | - | - | 314 |
| Order XLVI., rr. 2-10.  | Re PRYNNE                                                                | - | - | - | - | - | - | - | 317 |
| Order XLIX., r. 1.      | NORTON v. FENWICK                                                        | - | - | - | - | - | - | - | 323 |
| r. 3.                   | OCEAN STEAMSHIP CO. v. ANDERSON, TRITTON & CO.                           | - | - | - | - | - | - | - | 357 |

**RULES OF THE SUPREME COURT, 1883—continued.**

|                                                                                       |     |
|---------------------------------------------------------------------------------------|-----|
| Order XLIX., r. 5. <i>Re</i> EBERSLEY'S HOTEL CO. - - - - -                           | 357 |
| Order L., r. 11. <i>SELOUS v. CROYDON RURAL SANITARY AUTHORITY</i> - - - - -          | 355 |
| Order LII., r. 1. <i>PRITCHARD v. PRITCHARD</i> - - - - -                             | 344 |
| ----- <i>Re</i> LEWIN - - - - -                                                       | 347 |
| ----- r. 4. <i>HAMPDEN v. WALLIS</i> (No. 1) - - - - -                                | 315 |
| ----- <i>Re</i> WHITHAM - - - - -                                                     | 314 |
| ----- <i>SELOUS v. CROYDON RURAL SANITARY AUTHORITY</i> - - - - -                     | 355 |
| ----- <i>Re</i> WIGGESTON HOSPITAL AND STEPHENSON - - - - -                           | 344 |
| Order LIII., r. 9. <i>REG. v. JUSTICES OF PIREHILL NORTH, STAFFORDSHIRE</i> - - - - - | 343 |
| Order LV., r. 2 (ii). <i>Re</i> BARKER (AN INFANT) - - - - -                          | 221 |
| ----- sub-ss. 1, 4. <i>Re</i> HAWORTH - - - - -                                       | 316 |
| ----- sub-s. 7. <i>Re</i> BETHLEHEM AND BRIDEWELL HOSPITALS - - - - -                 | 219 |
| ----- 8, 18. <i>Re</i> TWEEDY - - - - -                                               | 481 |
| ----- r. 3. <i>Re</i> FAWSITT. <i>GALLAND v. BURTON</i> - - - - -                     | 313 |
| ----- <i>Re</i> JOHNSON - - - - -                                                     | 153 |
| ----- rr. 3, 4, 10. <i>Re</i> BLAKE. <i>JONES v. BLAKE</i> - - - - -                  | 315 |
| ----- rr. 3, 10. <i>Re</i> WILSON. <i>ALEXANDER v. CALDER</i> - - - - -               | 315 |
| ----- rr. 3 (x), 12. <i>Re</i> HALL - - - - -                                         | 474 |
| ----- rr. 4, 15. <i>DAVIDSON v. YOUNG</i> - - - - -                                   | 316 |
| ----- r. 10. <i>Re</i> BARRETT. <i>BARRETT v. BARRETT</i> - - - - -                   | 153 |
| ----- <i>Re</i> DICKINSON. <i>DICKINSON v. WALKER</i> - - - - -                       | 153 |
| ----- <i>BORTHWICK v. RANSFORD</i> - - - - -                                          | 317 |
| ----- <i>Re</i> GYHON. <i>ALLEN v. TAYLOR</i> - - - - -                               | 304 |
| ----- <i>LINSELL v. PHILLIPS</i> - - - - -                                            | 230 |
| Order LV., r. 40. <i>Re</i> DOCWRA - - - - -                                          | 153 |
| ----- rr. 70, 71. <i>Re</i> DOVE. <i>BOUSFIELD v. DOVE</i> - - - - -                  | 316 |
| Order LVI., r. 2 (b). <i>THOMPSON AND WRIGHT, Re</i> - - - - -                        | 198 |
| Order LVII., r. 1 (b). <i>SMITH v. CRITCHFIELD AND JENNER</i> - - - - -               | 420 |
| ----- rr. 8, 11. <i>WATERHOUSE v. GILBERT</i> - - - - -                               | 339 |
| ----- r. 13. <i>ROBINSON v. TUCKER</i> - - - - -                                      | 338 |
| Order LVIII., r. 5. <i>PERKINS v. DANGERFIELD</i> - - - - -                           | 344 |
| ----- r. 6. <i>THE "BEESWING."</i> - - - - -                                          | 311 |
| ----- r. 15. <i>Re</i> HARDWIDGE - - - - -                                            | 316 |
| ----- <i>Ex parte</i> ARDEN. <i>Re</i> ARDEN - - - - -                                | 23  |
| ----- <i>Ex parte</i> TIPPETT. <i>Re</i> TIPPETT - - - - -                            | 24  |
| ----- <i>BRASNETT'S CASE</i> (No. 2) - - - - -                                        | 316 |
| ----- <i>Re</i> LEWIS. <i>LEWIS v. LEWIS</i> - - - - -                                | 317 |
| ----- <i>Re</i> FAWSITT. <i>GALLAND v. BURTON</i> - - - - -                           | 313 |
| ----- r. 16. <i>BRADFORD v. YOUNG</i> - - - - -                                       | 355 |
| Order LXIV., r. 7. <i>SAUNDERS v. PAWLEY</i> - - - - -                                | 359 |
| ----- <i>Re</i> WIGGESTON HOSPITAL AND STEPHENSON - - - - -                           | 344 |
| ----- r. 13. <i>WEBSTER v. MYER</i> - - - - -                                         | 341 |
| Order LXV., r. 1. <i>THE "WILLIAM SYMINGTON"</i> - - - - -                            | 305 |
| ----- <i>Re</i> BLAKE. <i>JONES v. BLAKE</i> - - - - -                                | 315 |
| ----- <i>HASKER v. WOOD</i> - - - - -                                                 | 319 |
| ----- <i>THE "FRIEDEBERG"</i> - - - - -                                               | 305 |
| ----- <i>Re</i> McCLELLAN - - - - -                                                   | 312 |

**xcii-**

**RULES OF THE SUPREME COURT, 1883—continued.**

### MISCELLANEOUS RULES.

**SUPREME COURT FUNDS RULES, 1884:—**

**BANKRUPTCY RULES, 1871:—**

**BANKRUPTCY RULES, 1883:—**

**BANKRUPTCY RULES, 1884:—**

**BANKRUPTCY RULES, 1885:—**

**Rule 268 (1) (a).** *Ex parte* ANDREWS - - - - - 41

**RULES UNDER THE COMPANIES ACTS:—**

|                                                                                    |   |   |   |     |
|------------------------------------------------------------------------------------|---|---|---|-----|
| General Order, Nov., 1862, rr. 31, 74. BRASNETT'S CASE (No. 2)                     | - | - | - | 316 |
| ----- rr. 33, 35, Sch. 3, Form 33. MILLER'S CASE                                   | - | - | - | 82  |
| ----- r. 35, Sch. 3, Form 39. <i>Re</i> HUBBACK. INTERNATIONAL MARINE              |   |   |   |     |
| HYDROPATHIC CO. <i>v.</i> HAWES                                                    | - | - | - | 158 |
| ----- Sch. 3, Form 54. CREDIT CO. <i>v.</i> WEBSTER                                | - | - | - | 101 |
| ----- March, 1868, rr. 4, 5. Sch. Forms 1, 2. <i>Re</i> CONSOLIDATED TELEPHONE CO. |   |   |   | 93  |
| ----- r. 5. TAMBRACHERRY ESTATES CO.                                               | - | - | - | 93  |

**RULES UNDER SOLICITORS REMUNERATION ACT, 1881:—**

|                                                                           |   |   |   |     |
|---------------------------------------------------------------------------|---|---|---|-----|
| General Order, Aug. 1882, r. 2. HUMPHREYS <i>v.</i> JONES                 | - | - | - | 442 |
| ----- r. 2 (a) (b) (c) Sch. I., Part II. <i>Re</i> FIELD                  | - | - | - | 442 |
| ----- r. 2, Sch. I., Part I. r. 11. <i>Re</i> MERCHANT TAYLORS' CO.       |   |   |   | 441 |
| General Order, r. 4, Sch. I., Part I., r. 11. <i>Re</i> WILSON            | - | - | - | 440 |
| ----- ss. 2, 6. FLEMING <i>v.</i> HARDCASTLE                              | - | - | - | 442 |
| ----- Sch. I., Part I. <i>Re</i> GIASCODINE                               | - | - | - | 444 |
| ----- Sch. I., Part 2, Sch. II., r. 2 (c). <i>Re</i> HICKLEY & STEWARD    | - | - | - | 443 |
| ----- cl. 6. <i>Re</i> DENNE                                              | - | - | - | 441 |
| ----- Sch. II. <i>Re</i> R. A. PARKER AND OTHERS                          | - | - | - | 442 |
| ----- Dec., 1882, Sch. Part I., r. 11. <i>Re</i> WADDALL, PARKER & PARKER | - | - | - | 441 |

**TABLE OF CASES**  
**IN THE DIGESTS FOR 1883 AND 1884, WHICH HAVE SINCE BEEN DECIDED**  
**ON APPEAL,**

| Name of Case.                                                                        | Column of<br>1883 Digest. | Column of 1885 Digest.     | Decision.                   |
|--------------------------------------------------------------------------------------|---------------------------|----------------------------|-----------------------------|
| Badische Anilin, &c., Fabrik v. Levinstein                                           | 265                       | 288                        | Reversed.                   |
| Cavendish v. Cavendish - - -                                                         | 451                       | 515                        | "                           |
| "Heinrich Bjorn," The - - -                                                          | 397                       | 434                        | "                           |
| Kaltenbach v. Lewis - - -                                                            | 158                       | 161                        | Partly reversed.            |
| Munster v. Railton ( <i>s. n.</i> Munster v. Cox)                                    | 307                       | 346                        | Affirmed.                   |
| Reg. v. Yates ( <i>s. n.</i> Yates v. Reg.) - -                                      | 118                       | 125                        | "                           |
|                                                                                      | Column of<br>1884 Digest. |                            |                             |
| Appleton, <i>Re</i> . Barber v. Tebbit - -                                           | 540                       | 524                        | Affirmed.                   |
| Asphaltic Wood Pavement, <i>Re</i> - -                                               | 114                       | 105                        | Varied.                     |
| Ballard v. Tomlinson - - -                                                           | 524                       | 499                        | Reversed.                   |
| Bedson's Trusts - - -                                                                | 537                       | 509                        | Affirmed.                   |
| Blackburn, etc., Building Society, <i>Re</i><br>( <i>s. n.</i> Walton v. Edge) - - - | 74                        | 66                         | "                           |
| Bradford v. Young (1) - - -                                                          | 157<br>374<br>538         | 135                        | "                           |
| Brinton v. Lulham - - -                                                              | 522                       | 495                        | "                           |
| Burdick v. Sewell ( <i>s. n.</i> S. v. B.) - -                                       | 456                       | 423                        | Reversed.                   |
| Cape Breton Co. - - -                                                                | 90                        | 86                         | Affirmed.                   |
| Cavendish v. Cavendish - - -                                                         | 545                       | 515                        | Reversed.                   |
| Clay, <i>Re</i> - - -                                                                | 545                       | 513                        | Affirmed.                   |
| Cleather v. Twisden - - -                                                            | 302                       | 285                        | Reversed.                   |
| Colonial Bank v. Whinney - - -                                                       | 43                        | 34                         | Affirmed.                   |
| Craddock v. Rogers - - -                                                             | 281                       | 260                        | "                           |
| Cramer v. Giles - - -                                                                | 426                       | See 1 C. & E. pt. 3, p. x. | "                           |
| Cropper v. Smith ( <i>s. n.</i> S. v. C.) - -                                        | 306                       | 287                        | Varied.                     |
| Dames to Wood - - -                                                                  | 515                       | 490                        | Affirmed.                   |
| Dunn v. Flood - - -                                                                  | 512                       | 484                        | "                           |
| Edgington v. Fitzmaurice - - -                                                       | 100                       | 92                         | "                           |
| Elliot v. Dean - - -                                                                 | 186                       | See 1 C. & E. pt. 3, p. x. | (Affirmed by Div.<br>Court. |
| Ellis v. Rogers - - -                                                                | 519                       | 493                        | Affirmed.                   |
| Esdaile v. Payne - - -                                                               | 488                       | 460                        | Reversed.                   |
| Farrer v. Lacy, Hartland, & Co. - -                                                  | 278                       | 260                        | Affirmed.                   |
| Fitzroy Bessemer Steel Co., <i>Re</i> - -                                            | 99                        | 92                         | Compromised.                |
| Garnett, <i>Re</i> - - -                                                             | 417                       | See 31 Ch. D. 1.           | Reversed.                   |
| Harrison, <i>Ex parte</i> <i>Re</i> Cannock, etc., Co.                               | 104                       | 96                         | "                           |
| Hazle's Settled Estate - - -                                                         | 440                       | 407                        | Affirmed.                   |
| "Heinrich Bjorn," The - - -                                                          | 466                       | 434                        | Reversed.                   |
| Hill to Chapman - - -                                                                | 549                       | 519                        | Affirmed.                   |
| Hubback, <i>Re</i> - - -                                                             | 175                       | 158                        | Reversed.                   |
| Irish Commissioners v. Grant - - -                                                   | 253                       | 231                        | Affirmed.                   |

| Name of Case.                                                         | Column of<br>1884 Digest. | Column of 1885 Digest.     | Decision.                              |
|-----------------------------------------------------------------------|---------------------------|----------------------------|----------------------------------------|
| Joseph v. Webb - - - -                                                | 308                       | See 1 C. & E. pt. 3, p. x. | Partly reversed.                       |
| Johnson & Tustin, <i>Re</i> - - - -                                   | 517                       | 492                        | Reversed.                              |
| Johnston v. Johnston - - - -                                          | 449                       | 418                        | Affirmed.                              |
| Kemmis v. Kemmis - - - -                                              | 210                       | 189                        | "                                      |
| Knatchbull's Settled Estate - - - -                                   | 486                       | 404                        | "                                      |
| Last v. London Assurance Corporation - -                              | 421                       | 387                        | Reversed.                              |
| Leigh v. Dickeson - - - -                                             | 486                       | 459                        | Affirmed.                              |
| Line v. Warren (No. 1) - - - -                                        | 288                       | 268                        | "                                      |
| Lybbe v. Hart - - - -                                                 | 35                        | 29                         | "                                      |
| M'Devitt v. Connolly - - - -                                          | 483                       | See 15 L. R. Ir. 500.      | Reversed.                              |
| Macnamara's Estate, <i>Re</i> - - - -                                 | 283                       | Not yet reported.          | Affirmed.                              |
| Molyneux v. White - - - -                                             | 520                       | See 15 L. R. Ir. 383.      | "                                      |
| Newton, etc., Improvement Commissioners<br>v. Lancashire J.J. - - - - | 195                       | 175                        | "                                      |
| Norwich Equitable Assurance Co., <i>Re</i> - -                        | 115                       | 103                        | "                                      |
| Ocean S. Co. v. Anderson & Co. (s. n. A.<br>v. O. - - - -             | 464                       | 433                        | Reversed.                              |
| Over-Darwen (Mayor) v. Lancaster J.J. - -                             | 196                       | 175                        | Affirmed.                              |
| Parnell v. Stedman - - - -                                            | 186                       | See 1 C. & E. pt. 3, p. x. | New trial refused<br>by C. A.          |
| Phelps v. Comber - - - -                                              | 56                        | 51                         | Affirmed.                              |
| Phillips v. Phillips - - - -                                          | 545                       | 212                        | Reversed.                              |
| Plumstead Board v. Spackman (s. n. S.<br>v. P.) - - - -               | 269                       | 250                        | Affirmed.                              |
| Portal and Lamb, <i>Re</i> - - - -                                    | 548                       | 518                        | Reversed.                              |
| Portsmouth v. Smith - - - -                                           | 490                       | 462                        | Affirmed.                              |
| Reg. v. Fobbing Commissioners - - - -                                 | 451                       | 419                        | Varied.                                |
| - v. Thompson (s. n. Berkeley v. Thomp-<br>son - - - -                | 53                        | 46                         | Affirmed.                              |
| Re Roberts. Tarleton v. Bruton - - - -                                | 544                       | 514                        | "                                      |
| Robinson v. Tucker - - - -                                            | 64                        | 338                        | "                                      |
| Russell v. Watts - - - -                                              | 159                       | 137                        | Reversed.                              |
| Russell's Trusts - - - -                                              | 534                       | 512                        | "                                      |
| Shield, <i>Re</i> - - - -                                             | 191                       | 170                        | "                                      |
| Smith v. Land and House Property Cor-<br>poration - - - -             | 518                       | 488                        | Affirmed.                              |
| Société Générale v. Tramways Co. - - - -                              | 105                       | 96                         | "                                      |
| Standing v. Bowring - - - -                                           | 10                        | 8                          | "                                      |
| Stock v. Inglis (s. n. I. v. S.) - - - -                              | 220                       | 195                        | "                                      |
| Svensdsen v. Wallace - - - -                                          | 219                       | 194                        | "                                      |
| Truman v. L. B. & S. C. Ry. Co. - - - -                               | 297                       | 276                        | { Affirmed by C.A.<br>Reversed by H.L. |
| "Vera Cruz," The (s. n. Seward v. V. C.<br>owners) - - - -            | 228                       | 202                        | Affirmed.                              |
| Wakefield v. Richardson (s. n. W. v.<br>Maffett) - - - -              | 444                       | 413                        | "                                      |
| Watts, <i>Re</i> . Cornford v. Elliott - - - -                        | 80                        | 73                         | "                                      |
| West London Commercial Bank v. Re-<br>liance Building Society - - - - | 284                       | 260                        | "                                      |
| Yeo v. Dawe - - - -                                                   | 423                       | 389                        | Reversed.                              |



# COMPLETE ANNUAL DIGEST

## OF

### EVERY REPORTED CASE FOR 1885.

( 1 )

**BANDONMENT**—Domicil.  
*See* DOMICIL.

— Railway — Parliamentary deposit — Promoters.  
*See* RAILWAY COMPANY. 1, 2.

— Ship—Contract of carriage—Freight.  
*See* SHIP—FREIGHT.

**BATEMENT**—Specific legacies.  
*See* WILL—CONSTRUCTION. 42.

**BEDUCTION**—Connivance of child.  
*See* CRIMINAL LAW. 1.

**DEED OF TITLE**—Deed not in vendor's possession—Expenses of making.  
*See* VENDOR AND PURCHASER—TITLE. 1.

— Perusal of—Solicitors' Remuneration Act, 1881.  
*See* SOLICITOR—BILL OF COSTS. 12.

**ACCEPTANCE**—Bill of exchange—Acceptance in blank.  
*See* BILL OF EXCHANGE. 1.

— Contract—Statute of Frauds.  
*See* SALE OF GOODS. 1.

**DEED AND SATISFACTION**—Contract—Consideration — Debtor and Creditor — Contract by editor to take less than Sum due.] An agreement between judgment debtor and creditor, it in consideration of the debtor paying down part of the judgment debt and costs, and on condition of his paying to the creditor or his nominee residue by instalments, the creditor will not have any proceedings on the judgment, is *nudum pactum*, being without consideration, and does not prevent the creditor after payment of the whole debt and costs from proceeding to enforcement of the interest upon the judgment.  
 Decision of the Court of Appeal (11 Q. B. D. ; 52 L. J. Q. B. 712, 1883 Dig., col. 101) *reversed*.  
*Winnell's Case* (5 Rep. 117a) and *Cumber v. Wynn* (1 Str. 426) followed. *FOAKES v. BEER*  
*App. Cas.* 605, 54 L. J. Q. B. 130, 51 L. T. 833,  
 [33 W. R. 233 (H. L., E.)]

**ACCOUNTS**.

*See* PRACTICE—ACCOUNTS.

— Banking — Joint investments — Survivorship.  
*See* BANKER. 1.

( 2 )

**ACCOUNTS**—*continued*.

— Books of—Evidence.  
*See* EVIDENCE. 1.

— Charity—Action by members of committee.  
*See* CHARITY. 1.

— Falsification of—Making false entry.  
*See* CRIMINAL LAW. 10.

— Trustee in bankruptcy—Power of Board of Trade.  
*See* BANKRUPTCY—TRUSTEE. 1, 2.

**ACCUMULATIONS**—*Tenant for Life and Remainderman—Trust for Accumulation of Rents to pay Mortgage Debts—Sale of Mortgaged Estate by Mortgagee—Right of Tenant for Life to possession.*] A testator devised his real estates (in the events which happened) to the use of the Plaintiff for life; with remainder to the use of the Plaintiff's first and other sons successively in tail male; with remainder over to the use of another person in fee. The will provided that, immediately after the death of a prior tenant for life (who died before the testator), the trustees of the will should receive the rents, and, after paying thereout the interest on the mortgages on the estates, should accumulate the residue, until the amount of the accumulations should be sufficient to discharge the principal of the mortgages. And the testator directed that, as soon as the accumulations should be sufficient to pay off the mortgages, the trustees should forthwith pay them off. And he declared that the Plaintiff, or other the person for the time being entitled for life or in tail to the estates under the limitations of the will, should not be entitled to receive any part of the rents until the mortgages had been paid off. After the testator's death the mortgagees sold those parts of the estates which were comprised in their mortgages. The proceeds of sale were not enough to pay the whole of the mortgage debts, and the balance was paid out of the accumulations of rents. A surplus of accumulations remained:—

*Held*, by Pearson, J., that the tenant for life was entitled to be let into possession of the estates which remained unsold, and to have the surplus of the accumulations paid to him. *NORTON v. JOHNSTONE* — 30 Ch. D. 649, 34 W. R. 13

2. — *Will — Remoteness.*] A testatrix di-

B

**ACCUMULATIONS**—*continued.*

rected that the interest of £3000, which was a charge upon certain real estates belonging to C., should be each year invested, and when it amounted to £500 should be divided equally between A. and B., and so continued until they should have received £1000 each. She further directed that if, at the time they should have received the last instalment, the estates held by C. should still be in the hands of a member of her family and a Protestant, the interest of the £3000 was still to continue to be invested, and as it amounted to a sufficient sum to be applied in buying up the tithe rent-charges of the estates, one by one. When the tithe rent-charges were all bought up, the £3000 was to lapse to the owner of the estates. In the event of the said estates not being in the hands of a Protestant member of her family at the time A. and B. should have received the last instalment, or if, during the time of buying up the rent-charges, they should cease to belong to a Protestant member of her family, the £3000 was to be divided equally between A., B., D., and E.:—*Held*, that the entire trust for accumulation was void for remoteness.

*Oddie v. Brown* (4 De G. & J. 179) distinguished. *SMITH v. CUNINGHAM* 13 L. R. Ir. 480

— Maintenance of infant out of.

*See* INFANT. 4, 5.

— Married woman—Restraint on alienation and anticipation.

*See* HUSBAND AND WIFE—WIFE'S PROPERTY. 4.

— Of income—Gift to children—Remoteness.

*See* WILL—PERPETUITY.

**ACQUIESCENCE**—Breach of covenant—Damages instead of injunction.

*See* COVENANT. 1.

**ACT OF BANKRUPTCY.**

*See* BANKRUPTCY—ACT OF BANKRUPTCY.

**ACT OF GOD**—Sea-wall—Destruction of—Liability of frontager to repair.

*See* SEWERS.

**ACTION**—*Money Paid—Indemnity—Goods lawfully seized for another's Debt.* As a general rule, where one person's goods are lawfully seized for another's debt, the owner of the goods is entitled to redeem them, and to be reimbursed by the debtor against the money paid to redeem them, and in the event of the goods being sold to satisfy the debt the owner is entitled to recover the value of them from the debtor; and the right to indemnity exists although there may be no agreement to indemnify, and although there may be in that sense no privity between the owner of the goods and the debtor.—*England v. Marsden* (L. R. 1 C. P. 529, 35 L. J. C. P. 259) questioned.—The Defendant bought the business of an ironmonger in his own name for his two sons; he paid the greater part of the purchase-money. The banking account of the business was kept by him, and he drew the cheques on that account. A society having obtained judgment in an action against the Defendant, certain goods of his sons were seized by the sheriff: the sons claimed the goods; but upon an interpleader summons taken out by the

**ACTION**—*continued.*

sheriff, the claim of the sons was barred, and the goods were sold. They realized £1300, and this sum was paid into Court in the action by the society against the Defendant as a security for what might be found due to the society from the Defendant upon taking certain accounts. The Defendant's sons were afterwards adjudicated bankrupts, and the Plaintiff was appointed their trustee. The Defendant agreed with the Plaintiff that in consideration of his son's goods having been seized and sold on behalf of the society in respect of an alleged claim against him, he would pay £300 per annum to the Plaintiff until he should have paid a sufficient sum to pay the trade creditors of his sons in full. The Plaintiff having brought the present action to recover £1200 due by virtue of the above-mentioned agreement, or in the alternative £1300, the value of the goods seized:—*Held*, that even if the Defendant's express promise to pay £1200 was not legally binding upon him, nevertheless the action was maintainable; for although the decision upon the interpleader summons did not estop the Defendant from shewing that the seizure by the sheriff was unlawful, nevertheless he had by his conduct led to the seizure, and the goods of his sons had been legally taken for his debt; the Defendant, therefore, was bound to indemnify his sons, and the Plaintiff, as their trustee in bankruptcy, was entitled to have judgment entered for him for the sum of £1200, which he was willing to accept instead of £1300, the value of the goods seized. *EDMUNDS v. WALLINGFORD* 14 Q. B. D. 811, 54 L. J. Q. B. [305, 52 L. T. 720, 33 W. R. 647, 49 J. P. [549, 1 C. & E. 334 (C.A.)]

2. — *Recovery of Rent-charge—Apportionment—Release of Part of the Hereditaments*—22 & 23 Vict. c. 35, s. 10.] The effect of 22 & 23 Vict. c. 35, s. 10, is that where the owner of land, which is subject to a rent-charge, sells and conveys such land in separate portions to different persons, and the person entitled to the rent-charge joins in the conveyance of one only of such portions and releases it from the rent-charge, without the concurrence of the person to whom the other portion has been conveyed, the whole of such rent-charge is not extinguished, but only a proportionate part of it can be recovered from the person to whom the unreleased portion was conveyed. Judgment of Stephen, J. (53 L. J. Q. B. 425, 1884 Dig. col. 4) reversed. *BOOTH v. SMITH* (No. 2)

[14 Q. B. D. 318, 54 L. J. Q. B. 119, 51 L. T. 742, [33 W. R. 142 (C.A.)]

— Against constable—Notice.

*See* CONTAGIOUS DISEASES ACT. 1.

— Agent betting for principal—Action for money received.

*See* GAMING.

— By or against executors.

*See* EXECUTOR—ACTIONS.

— Dismissal of, on point of law.

*See* PRACTICE—POINT OF LAW. 1, 2.

— Maliciously procuring bankruptcy.

*See* CHAMPERTY.

— Married woman's right of—Trespass.

*See* HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS. 6.

**ACTION**—*continued.*

- Misappropriation by officer of trades union—  
Prosecution—Subsequent action barred.  
*See TRADES UNION.*
- Quia timet action—Fouling stream.  
*See NUISANCE.* 2.
- Remittal of, to County Court.  
*See COUNTY COURT.* 6, 7.
- Subsidence—Action for, after compensation  
for previous subsidence.  
*See DAMAGES.* 9.
- Tenant—Overstocking land with game—  
Injury to crops.  
*See LANDLORD AND TENANT—LEASE.*  
11.
- To enforce statutory right.  
*See STATUTE.*
- Transfer of.  
*See PRACTICE—TRANSFER.*

**ADDRESS FOR SERVICE**—“Illusory or fictitious.”  
*See PRACTICE—WRIT.* 1.**ADEMPTION**—Gift of “all my interest in C. estate”—Purchase-money.  
*See WILL—CONSTRUCTION.* 13.

- Legacy—Moral obligation other than parental.  
*See WILL—ADEMPTION.*

**ADJOURNMENT**—Summons—Adjournment to judge.  
*See PRACTICE—CHAMBERS.* 1.**ADMINISTRATION.***See ADMINISTRATOR: EXECUTOR.*

- Insolvent estate of deceased debtor.  
*See BANKRUPTCY—ADMINISTRATION.*
- Summons.  
*See PRACTICE—CHAMBERS.* 2—4.

**ADMINISTRATOR**—*Bond—Sureties—Amount.* [The Court will not by reason of the property being large and the risk small dispense with sureties to an administration bond or lessen the amount to be secured. But it will allow the security to be made up of any number of bonds. *IN THE GOODS OF EARLE. IN THE GOODS OF M'GOWAN*]

[10 P. D. 196, 54 L. J. P. 95, 34 W. R. 48, 49  
[J. P. 761]

2. — *Bond—Amount of—20 & 21 Vict. c. 77, s. 82.* [An estate having been partly administered and a further bond become necessary, the Court allowed the administrator to take the grant for the amount then due to the estate, and to give security only for double that amount. *IN THE GOODS OF HALLIWELL*]

10 P. D. 198,  
[54 L. J. P. 32, 33 W. R. 371, 49 J. P. 233]

3. — *Bond—Assignment of—Creditor.* [Since the Probate Act, 1857, an unpaid creditor of a deceased intestate is entitled to an assignment of the administration bond.

*Archbishop of Canterbury v. Robertson* (1 C. & M. 711), and *Sandrey v. Mitchell* (3 B. & S. 405), explained.

A motion for the assignment of an administration bond should be on notice. *IN THE GOODS OF HARDING*

15 L. R. Ir. 186

4. — *Default by—Attachment—Debtors Act, 1869.* [Letters of administration had been

**ADMINISTRATOR**—*continued.*

granted to the widow of a deceased person upon the suggestion of intestacy, and she had received a sum of money, part of the deceased's property. The letters of administration were subsequently called in in an action propounding a will of the deceased, and in that action she was ordered to pay the sum of money to the administrator pending suit, which order she had not obeyed:—*Held*, by Butt, J., that she was not protected by the Debtors Act, 1869, and therefore was liable to attachment. *TINNUCHI v. SMART* 10 P. D. 184,  
[54 L. J. P. 92, 34 W. R. 46, 49 J. P. 792]

5. — *Grant to Creditor—Company—Call made after Intestate's Death.* [An intestate was the holder of shares in a company, on which a call was made after his death:—*Held*, by Butt, J., that administration must be granted to the nominee of the company as a creditor of the intestate's estate. *TOMLINSON v. GILBY* — 54 L. J. P. 80,  
[33 W. R. 800, 49 J. P. 632]

6. — *Suppression of Will not appointing Executors—Sale of Leaseholds by Administrator—Title of Purchaser.* [A grant of letters of administration obtained by suppressing a will containing no appointment of executors is not void *ab initio*, and accordingly a sale of leaseholds by an administratrix who had obtained a grant of administration under such circumstances to a purchaser who was ignorant of the suppression of the will, was upheld by the Court, although the grant was revoked after the sale.

*Abram v. Cunningham.* (2 Lev. 182) distinguished. *BOXALL v. BOXALL* 27 Ch. D. 220,  
[53 L. J. Ch. 838, 51 L. T. 771, 32 W. R. 896]

7. — *Transfer of Share—Sale by Representative of Beneficial Owner.* [The registered owner of a share in a company died intestate in April, 1859, and A., her sole next of kin, took out administration to her estate. A. died intestate in November, 1859, and his widow took out administration to his estate. The share being still in the original owner's name, in February, 1860, A.'s administratrix exhibited her residuary account of the original owner's estate, whereby it appeared that, subject to the payment of legacy duty, that estate had been fully administered. In November, 1860, the administratrix of A. sold the share to a purchaser, being described in the transfer as “administratrix of A., administrator of” the original owner:—*Held*, by North, J., that the sale was valid and binding in equity. *CLARK v. SOUTH METROPOLITAN GAS CO.* — 54 L. J. Ch. 259,  
[52 L. T. 127, 33 W. R. 160, W. N. (1884) 225]

— *See also EXECUTOR.***ADMIRALTY.***See PRACTICE—ADMIRALTY.***ADMISSION**—By deceased, against interest.*See BANKRUPTCY—PROOF.* 3.

- Master of ship—Letter.

*See EVIDENCE.* 2.

- Payment into Court upon.

*See PRACTICE—PAYMENT INTO COURT.*  
1, 2.

**ADULTERATION**—*Sale of Food and Drugs Act, 1875* (38 & 39 Vict. c. 63), s. 6—*Sale of Article not of the Nature, Substance, and Quality of the*

**ADULTERATION—continued.**

*Article demanded—Prejudice of the Purchaser.*] It was proved on an information under sect. 6 of the Sale of Food and Drugs Act, 1875, that the Appellant, who was an inspector under the Act, on asking the Respondent, a milk seller, for "milk," was supplied by the Respondent with milk which had been skimmed, and which was, in consequence, as compared with normal milk as it comes from the cow, deficient in butter fat to an extent of 60 per cent.:—*Held*, by Mathew and Day, JJ., that on these facts it was not proved that any offence had been committed by the Respondent against the provisions of sect. 6 of the Sale of Food and Drugs Act, 1875. *LANE v. COLLINS* - 14 Q. B. D. 93, [54 L. J. M. C. 76, 52 L. T. 257, 33 W. R. 365, [49 J. P. 89, 15 Cox, C. C. 677]

2. — *Sale of Food and Drugs Act, 1875* (38 & 39 Vict. c. 63), s. 6—*Sale of Article not of "nature, substance, and quality demanded."*] The Sale of Food and Drugs Act, 1875, after reciting that it is desirable to amend the law regarding the sale of food and drugs in a pure and genuine condition, provides by sect. 6 that no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser under a penalty:—*Held*, by Mathew and Smith, JJ., that sect. 6 was not limited in its application to sales of adulterated articles, but that it applied also to cases in which the article sold was unadulterated but wholly different from that demanded by the purchaser. *KNIGHT v. BOWERS* 14 Q. B. D. 845, 54 L. J. M. C. [108, 53 L. T. 234, 33 W. R. 613, 49 J. P. 614]

**ADULTERY.**

*See* HUSBAND AND WIFE—DIVORCE. 1—3.

— Whether "molestation"—Covenant.

*See* HUSBAND AND WIFE—SEPARATION DEED. 2.

**ADVANCEMENT—Child**—"Advancement by portion"—*Death of Father intestate—Statute of Distributions* (22 & 23 Car. 2, c. 10), s. 5.] A gift by a father to a son to enable the son to pay a debt:—*Held*, by Pearson, J., on the death of the father intestate, to be an "advancement by portion" of the son, within sect. 5 of the Statute of Distributions.—The opinion expressed by Jessel, M.R., in *Taylor v. Taylor* (L. R. 20 Eq. 155) dissented from. *Re BLOCKLEY*. *BLOCKLEY v. BLOCKLEY* [29 Ch. D. 250, 54 L. J. Ch. 722, 33 W. R. 777]

2. — *Double portions—Satisfaction—Ademption—Evidence—Gift by Person in loco parentis.*] A testator, after making his will, by which he gave his son a share in the residue of his estate, purchased for the son farming-stock, and set him up on a farm. On the testator's death the trustees of the will debited the son with a sum of money, equal to the value of the farming-stock, as having been advanced by the testator by way of loan, and as a debt due from the son to the estate.

*Held*, by Kay, J., that, although *Grave v. Salisbury* (3 Bro. C. C. 425) laid down that where there had been a gift of farming-stock there was no presumption that it was intended as an advance to be set off against a legacy receivable under a will, yet *Kirk v. Eddowes* (3 Ha. 509) was an authority that evidence was admissible to shew

**ADVANCEMENT—continued.**

that, at the time of the gift, the testator expressed his intention that such gift was an advance to be set off; that in this case the Court was of opinion that such an intention had been proved, and that therefore the value of the farming-stock must be deducted from the son's share. *Re TURNER*. *TURNER v. TURNER* - 53 L. T. 379

3. — *Parent and Child—Will—Settlement.* *Re ASHMORE*. *ASHMORE v. PALEY* W. N. (1885) 154

4. — *Transfer of Stock into joint Names—Trust—Intention to benefit—Claim to have Re-transfer.*] The Plaintiff, a widow, in the year 1880 caused a sum of £6000 consols to be transferred into the joint names of herself and the Defendant, who was her godson, and in whose welfare she took great interest. This transfer was not made known to the Defendant. In 1882 the Plaintiff, then eighty-eight years old, married a second husband, and soon afterwards applied to the Defendant to re-transfer the stock into her name alone:—*Held*, by Pearson, J., upon the evidence, that the transfer was originally made with the deliberate intention of benefiting the Defendant, and not with a view to the creation of a trust. The Court could not, therefore, compel the Defendant to re-transfer the stock. *STANDING v. BOWRING* - 27 Ch. D. 341, 54 L. J. Ch. 10, [51 L. T. 591, 33 W. R. 79]

(Affirmed by C.A., W. N. (1885) 223.)

— Hotchpot clause.

*See* WILL—CONSTRUCTION. 1.

— Loan from father to son—Lapsed devise. 1

*See* SET-OFF.

— To son to start a business.

*See* VOLUNTARY CONVEYANCE. 3.

— Will—Appointment to object of power subject to charge—Election.

*See* ELECTION. 6.

**ADVERTISEMENT**—Petition for reduction of capital.

*See* COMPANY—REDUCTION OF CAPITAL.

1—3.

**ADVOWSON**—*Consolidated Benefice under 3 & 4 Vict. c. 113, and 26 & 27 Vict. c. 120—Right of Presentation.*] The vicarage of P. formerly consisted of two mediocrities, known respectively as the upper vicarage and the lower vicarage, the profits and spiritual charge being divided between two incumbents. There was only one parish church, and the right of patronage and nomination to the upper vicarage was vested in the Lord Chancellor, and that of the lower in the Rev. H. F. Welch. In 1873, Welch presented himself to the lower vicarage. In 1875 he mortgaged the advowson thereof (with a power of sale) to Howes for 800*l.*, and in 1877 made a further charge upon it in favour of Howes for 250*l.* In 1878, the Lord Chancellor, under 26 & 27 Vict. c. 120, conveyed to Welch the advowson of the upper vicarage, subject to the then-existing incumbency. There was a proviso in the Act restricting the purchaser from selling the advowson or next presentation until after the expiration of five years from the date of the purchase. In May, 1879, the incumbency of the lower vicarage having become vacant, the two vicarages were under 3 & 4 Vict. c. 113 and an Order in Council consolidated, and the

**ADVOWSON—continued.**

two medieties became in respect both of the profits and the spiritual charge one undivided benefice, of which Welch without any form of institution became the incumbent, in whom was vested the advowson or right of patronage and nomination of the whole undivided benefice. On the first of August, 1879, Welch mortgaged the advowson of the consolidated benefice to Howes, to secure the previous and further advances, with the usual power of sale.—In March, 1882, Howes died, leaving a widow, and having by his will devised and bequeathed his residuary real and personal estate to trustees, in trust for his wife for life, &c. In March, 1883, the executors of Howes contracted to sell the advowson of the undivided benefice to his widow, and she, in April, 1883, contracted to sell the same to one Ellison. In June, 1883 Welch died insolvent (the debt to Howes still remaining unpaid), having by his will devised and bequeathed all his real and personal estate to trustees in trust for his widow (the now plaintiff) for life, &c.—The plaintiff and the executors of Howes each claimed the right to present to the undivided vicarage:—*Held*, by Mathew, J.,—upon the authority of *Hawkins v. Chappel* (1 Atk. 621) and *Briggs v. Sharp* (Law Rep. 20 Eq. 317),—that the right to nominate was in the plaintiff, she being under her husband's will beneficial owner for life of his estate real and personal, and there being no indication of an intention that during her life the right to nominate should be exercised by any other person. *WELCH v. BISHOP OF PETERBOROUGH* - - - 15 Q. B. D. 432

2. — *Freehold Hereditament "situate in the parish of D."*—Description—Parcels—General Words—Recitals.] An advowson, although it is a hereditament, and, as being the right of presentation to a church at a particular place, "does concern land at a certain place," is but a right collateral to land, and is not aptly described as "being situate at" a particular place. Such a description, however, may pass an advowson under certain circumstances, e.g. when upon an examination of the whole instrument a clear intention is shewn that it shall pass, or upon evidence that there is no other property in that particular place capable of being disposed of by the instrument.

*Anon.* (3 Dyer, 323 b) and *Kensey v. Langham* (Cas. t. Tal. 143) discussed and reconciled.

General words, although introduced for the purpose of sweeping into the assurance everything which has been omitted by mistake, apply *prima facie* only to things *eiusdem generis* with those specifically enumerated.

G. J., tenant in tail in possession of manors, lands, and hereditaments, devised by the will of J. J., and also of the advowson of Christchurch, Doncaster, appointed to somewhat similar uses by a separate devise in the same will, by a deed which recited only the devise of the manors, &c., disentailed and limited to the use of himself in fee, "All and singular the manors, lands, hereditaments and premises devised by the said will, and also all other the lands, hereditaments and premises whatsoever, of which he was seized as tenant in tail in possession in anywise howsoever."

**ADVOWSON—continued.**

By a deed of re-settlement executed the next day, after reciting that he was seized of "The several manors and hereditaments comprised in the schedule subject to certain charges," and desired to settle "the same hereditaments" he assured to trustees in strict settlement, "All and singular the manors, messuages, farms, lands and hereditaments comprised and described in the schedule," "and all other the freehold hereditaments of him the said G. J. situate in the parish of Doncaster." The schedule contained a detailed description of the parcels, but neither in it nor the deed itself was there any reference to, or any provision applicable to the advowson. G. J. had property other than the advowson in the parish of D., and the advowson was not subject to any charges.

It was admitted that some portions of the disentailed property had been intentionally omitted from the resettlement:—

*Held*, by North, J., that the advowson was included in the disentailing deed.

*Held*, by the Court of Appeal (affirming the decision of North, J.), that having regard to the recitals, the omission of parts of the property, and looking to the whole scope of the deed, the advowson was not by force of the general words "all other hereditaments situate in the parish of D." included in the deed of resettlement. *CROMPTON v. JARRATT* - 30 Ch. D. 298, 54 L. J. Ch. 1109, [53 L. T. 603, 33 W. R. 913 (C.A.)]

**AFFIDAVIT.**

See PRACTICE—EVIDENCE.

— As to documents.

See PRACTICE—DISCOVERY—DOCUMENTS.

— Attachment—Service—Irregularity.

See PRACTICE—ATTACHMENT OF PERSON.

— Service of writ *in rem*.

See PRACTICE—ADMIRALTY. 20.

— Sworn abroad—British vice-consul—Notarial certificate.

See BANKRUPTCY—EVIDENCE.

**AFTER-ACQUIRED PROPERTY.**

See SETTLEMENT—AFTER-ACQUIRED PROPERTY.

**AGENCY.**

See PRINCIPAL AND AGENT.

**AGISTMENT**—Agricultural Holdings Act—Protection from distress.

See LANDLORD AND TENANT—DISTRESS. 5.

**AGREEMENT.**

See CONTRACT.

— Stamp.

See REVENUE. 9, 10, 12.

**AGREEMENT FOR LEASE.**

See LANDLORD AND TENANT—AGREEMENT.

**AGRICULTURAL HOLDINGS ACT**—Appointment of distress bailiff under.

See LANDLORD AND TENANT—DISTRESS. 1.

— Compensation under.

See LANDLORD AND TENANT—IMPROVEMENTS.

**AIR.**

See LIGHT.

**ALIMONY**—Order for payment of.—Debt or liability.

See BANKRUPTCY—PRAISE. 2.

— Permanent—Allowance out of lunatic's estate.

See PRACTICE—DIVORCE. 1.

**AMALGAMATION**—Company—Rec instruction.

See COMPANY—AMALGAMATION.

**AMBIGUITY**—In will—Evidence to explain.

See WILL—CONSTRUCTION. 2, 3, 9.

**AMENDMENT.**

See PRACTICE—AMENDMENT.

**ANIMALS**—Cruelty to—Disbarring cattle.

See CRUELTY TO ANIMALS.

— Injury caused by.

See MISCHIEVOUS ANIMAL.

**ANNUITY**—Valuation—Insufficient Funds—

Arrears—Apportionment between Annuitant and other Claimants.] A separation deed provided for the payment by the husband of an annuity to trustees for the wife. Upon the husband's death children of the marriage claimed to be entitled under the same deed to a large amount in the funds held by the trustees; such funds were, however, insufficient to satisfy their claims and also to answer the annuity, besides paying off arrears.

Upon an originating summons, taken out to decide (*inter alia*) the mode in which the available funds should be apportioned between the widow and the children:—*Held*, by Pearson, J., that, for the purpose of such apportionment, the amount of the arrears of the annuity to the date of the hearing of the summons must be added to the value of the annuity at the same date, ascertained according to the table of values of government annuities, and that the fund must be divided in the proportion borne by the total so arrived at to the full amount claimed by the children. *DELVES v. NEWINGTON* - - - 53 L. T. 512, [W. N. (1885) 26]

— Whether for life or perpetual.

See WILL—ANNUITY.

**APOTHECARIES ACT**—Unqualified person—Right to sue.

See MEDICAL PRACTITIONER.

**APPEAL.**

See PRACTICE—APPEAL.

— Bankruptcy.

See BANKRUPTCY—APPEAL.

**APPEARANCE**—Address for service—"Illusory or fictitious."

See PRACTICE—WRIT. 1.

**APPOINTMENT, POWER OF.**

See POWER.

**APPORTIONMENT**—Tenant for Life and Remainderman—Mortgage—Insufficient Security—Interest in Arrear—Compound Interest.] The trustees of a will invested moneys settled by it on mortgage. The interest fell into arrear, and when the mortgaged property was sold it realised a sum less than the principal of the mortgage money.

*Held*, by Pearson, J., that the sum realised by the sale must be apportioned between the tenant

**APPORTIONMENT—continued.**

for life of the settled money and the persons entitled to it in remainder, in the proportions which the principal of the mortgage money (which belonged to the remaindermen) and the arrears of interest (which belonged to the tenant for life) bore to each other, without any computation of compound interest. *Re MOORE. MOORE v. JOHNSON* 54 L. J. Ch. 422, 53 L. T. 510, 33 W. R. 447, [W. N. (1885) 17]

2. — *Tenant for Life and Remaindermen—Capital and Income—Contingent Reversionary Interest.*] H. by his will bequeathed his residuary personalty upon trust, after payment of debts and legacies, to lay out and invest the residue as therein mentioned, and to pay the income to the Plaintiff for life, with remainders over. Part of the residue consisted of a contingent reversionary interest in some settled funds. H. died in 1832, and the reversion first became saleable in 1846, but had never been sold. Since 1846 it had enormously increased in value. Upon an application in effect to have the value of the reversion apportioned as between tenant for life and remaindermen,

*Held*, by Kay, J., that, assuming the reversion to have been sold at an agreed price, it must be ascertained what principal sum would, with compound interest from the date of the testator's death, make up the agreed price, and such principal sum alone must be attributed to corpus, and all the rest to income.

*Re Chesterfield's Trusts* (24 Ch. D. 643, 52 L. J. Ch. 958, 49 L. T. 261, 32 W. R. 361), and *Beavan v. Beavan* (24 Ch. D. 649, n., 52 L. J. Ch. 961, n., 49 L. T. 263, n., 32 W. R. 363, n.) applied. *Re HOBSON. WALKER v. APPACH (or APPACK)*

[53 L. T. 637, 34 W. R. 70, W. N. (1885) 184]

— Annuity—Insufficient funds—Annuitant and other claimants.

See ANNUITY.

— Bequest to charity—Sum invested partly on mortgage of realty.

See CHARITY. 8.

— Bonus dividend—Capital or income.

See EXECUTOR—ADMINISTRATION. 2.

— Rent-charge—Release of part of hereditaments.

See ACTION. 2.

— Settlement of business—Losses.

See SETTLEMENT—MANAGEMENT. 1.

— Tenant for life—Capital and income—Business—Losses.

See WILL—TRUSTEES. 1.

— Will—Insufficient estate—Annuities—Abatement.

See EXECUTOR—ADMINISTRATION. 1.

**ARBITRATION**—Action for Tort—Order of Reference—Death of Party before making of Award—*Maxim, "Actio personalis moritur cum persona."*] The parties to an action for a tort agreed before trial to refer the matter in dispute to an arbitrator. The order of reference contained a clause that the arbitrator should publish his award "ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of

**ARBITRATION—continued.**

the said parties die before the making of the award).” After the hearing of the reference had been concluded, but before the award was made, the Plaintiff died. The arbitrator afterwards published the award, and the executors of the Plaintiff having proved his will, took up the award:—*Held*, that the cause of action being in tort died with the Plaintiff and did not pass to his personal representatives by force of the clause above mentioned, which in an action of tort was inoperative, and that the executors were not entitled to be substituted as Plaintiffs in place of their testator. *BOWKER v. EVANS* 15 Q. B. D. 565, [54 L. J. Q. B. 421, 33 W. R. 695 (C.A.)]

2. — *Agreement to refer—Submission—Rule of Court—Agreement to appoint Valuers—Landlord and Tenant—Valuation on Expiration of Tenancy—Common Law Procedure Act, 1854* (17 & 18 Vict. c. 125), s. 17.] An agreement between landlord and tenant for the letting of a farm provided, that the tenant should be paid at the expiration of the tenancy the usual and customary valuation, as between outgoing and incoming tenant, in the same manner as he paid on entering the premises. And it was thereby mutually agreed by and between the parties thereto, that, when any valuation of the covenants should be made between the tenant and the landlord, or his incoming tenant, the persons making such valuation should take into consideration the state, condition, and usage of the farm, and, if not left in a proper and creditable state, should determine what sum of money should be paid to the landlord as compensation therefor, and should deduct such sum from the amount of the valuation. On the expiration of the tenancy, there being no incoming tenant, the landlord and tenant respectively appointed a valuer. The valuers could not agree upon the amount of the valuation, and they appointed an umpire, who held a sitting and heard witnesses, and then made and published an award in writing. The tenant, with the view of obtaining an order remitting the matters in dispute to the umpire for reconsideration, applied for an order to make the submission to arbitration contained in the agreement together with the appointment of arbitrators and umpire, a rule of court, under sect. 17 of the Common Law Procedure Act, 1854:—*Held*, affirming the decision of Coleridge, C.J., and Mathew, J. (53 L. T. 392) that the agreement did not contain any submission to arbitration, but that it provided only for the appointment of valuers, and that it could not, therefore, be made a rule of court.—*Re Hopper* (L. R. 2 Q. B. 367) explained and distinguished. *Re DAWDY & HARTCUP* 15 Q. B. D. 426, 54 L. J. Q. B. 574 (C.A.)

3. — *Costs—Arbitrator's Power over—Reference of “all matters in difference”—Costs in the Cause.*] Where after writ in an action “all matters in difference between the parties” are referred to an arbitrator, and the order of reference contains a clause that “the costs of the said cause and the costs of the reference and award shall be costs in the cause,” the arbitrator has power to deal with all the costs, and may order

**ARBITRATION—continued.**

the successful Plaintiff to pay the Defendant's costs.

So *held*, by Grove, Manisty, and Lopes, JJ. *HAYWARD v. MOSS* - - - 49 J. P. 248

— Action referred to—Costs to abide “event” —Counter-claim.

See PRACTICE—COSTS. 9.

— Agricultural Holdings Act—Compensation for improvements.

See LANDLORD AND TENANT—IMPROVEMENTS. 1.

— Articles of partnership—Continuance after term expired.

See PARTNERSHIP. 1.

— Award—Notice of motion to set aside—Affidavits not served with.

See PRACTICE—NOTICE OF MOTION.

— Compensation for land compulsorily taken.

See ARTIZANS' DWELLINGS ACT.

— Disputes between building society and member.

See BUILDING SOCIETY. 2.

— Jurisdiction of arbitrator—“Dispute arising on this contract.”

See PRINCIPAL AND AGENT. 2.

— Lands Clauses Act—Arbitrator neglecting to act.

See LANDS CLAUSES ACT. 17.

— Public Health Act—Dispute of liability—Jurisdiction.

See PUBLIC HEALTH ACTS. 1.

— Railway Passengers' Assurance Co.'s Act.

See PRACTICE—STAYING PROCEEDINGS. 5.

— Referee—Practice.

See PRACTICE—REFEREE.

— Shorthand notes of proceedings—Privilege.

See PRACTICE — DISCOVERY — DOCUMENTS. 7.

**ARCHITECT**—Appointment of, by School Board —Contract not under seal.

See ELEMENTARY EDUCATION ACTS. 3.

— Certificate of—“General line of building.”

See METROPOLIS. 9.

**ARMY**—*Military Law—Habeas Corpus—Canteen Steward—Army Act, 1881* (44 & 45 Vict. c. 58), s. 176, sub-s. 4] A canteen-steward appointed by the commanding officer of the district, acting under a committee consisting of three officers, and having no interest in the profits of the canteen, but receiving such pay or allowance as the committee may think fit to award him, and being liable to dismissal at the pleasure of the committee, though performing no military duty, wearing no uniform, bearing no arms, and having free ingress and egress at his pleasure to and from the barracks,—is still a person subject to military law within sect. 176, sub-sect. 4, of the Army Act, 1881. So *held*, by Coleridge, C.J., and Butt, J. *Re WILLIAM FLINT* 15 Q. B. D. 488, 33 W. R. 936

— British subject in military service—Domicil of.

See DOMICIL. 2.

— Soldiers—Service Franchise.

See PARLIAMENT. 11, 12.

**ARREST—Debtors Act—Married Women—Judgment Summons—Order for Payment—Separate Estate—Restraint on Anticipation—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.]** Upon a judgment summons issued under sect. 5 of the Debtors Act, 1869, against a married woman who has only separate estate which she is restrained from anticipating, an order for payment cannot be made unless it is shewn that, since the date of the judgment, she has received some of her separate income.—If in the judgment execution is limited to separate estate which she is not restrained from anticipating, *quære*, whether sect. 5 of the Debtors Act, 1869, applies at all.—*Dillon v. Cunningham* (Law Rep. 8 Ex. 23) distinguished. *MEAGER v. PELLEW* (or, *Ex parte MEAGER, Re PELLEW*) [14 Q. B. D. 973, 53 L. T. 67, 33 W. R. 573 (C.A.)]

2. — *Debtors Act—Order for Committal—Order to pay Debt by instalments—“Means to pay”—Money arising from Gift—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5, sub-s. 2.]* Per Cotton and Lindley, L.JJ.:—For the purpose of determining whether a judgment debtor has had “the means to pay” the judgment debt, with the view of making an order for his committal under sub-sect. 2 of sect. 5 of the Debtors Act, 1869, money derived from a gift may be taken into account. It is not necessary that the “means to pay” should have been derived from the debtor’s earnings, or from a fixed income. *Ex parte KOSTER. Re PARK* — 14 Q. B. D. 597, 54 L. J. Q. B. [389, 52 L. T. 946, 33 W. R. 606 (C.A.)]

3. — *Debtors Act—Order of Committal—Application for, for non-payment of Instalments—Affidavit—Debtors Act (Ireland) 1872, s. 6.]* Upon an application to commit under the above section, for non-payment of instalments previously ordered to be paid, there must be an affidavit showing that at the time of such application the debtor is still in a position to pay the instalments. *DAVIS v. SIMMONDS* — 14 L. R. Ir. 364

4. — *Ne exeat regno—Debtors Act, 1869 (32 & 33 Vict. c. 62), ss. 4, 6.]* An order was made that a trustee should within seven days after service of the order pay to his *cestui que trust*, the Plaintiff, a sum found due to him by the Chief Clerk’s certificate. The Plaintiff could not find the trustee so as to serve the order, and applied for a writ of *ne exeat* on the ground that the trustee was about to go out of the jurisdiction:—*Held*, that the case did not fall within the third exception in sect. 4 of the Debtors Act, 1869, the trustee not being in default, as the order only directed payment after service and had not been served, and that as the debt was not now due and payable a writ of *ne exeat* could not be granted. *COLVERSON v. BLOOMFIELD* 29 Ch. D. 341, 54 [L. J. Ch. 817, 52 L. T. 478, 33 W. R. 889 (C.A.)]

— Debtor—Receiving order—Privilege  
See BANKRUPTCY—PROTECTION.

#### ARTICLED CLERK.

See SOLICITOR—ARTICLED CLERK.

#### ARTICLES—Company’s, of association.

See COMPANY—MEMORANDUM.

— Of Partnership—Arbitration Clause.

See PARTNERSHIP. 1.

#### ARTICLES—continued.

— Of settlement—Power of appointment—Recitals in will—Hotchpot.

See SETTLEMENT—ARTICLES.

**ARTIZANS’ DWELLINGS ACT—Artizans’ and Labourers’ Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36)—Compulsory taking of Land—Arbitration Award—Payment of Sum awarded into Court—Appeal—Verdict of Jury for larger Sum—Payment of Difference into Court—Time of taking Possession—Interest on Difference.]** Where, under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36), a sum of money has been paid into Court by a local authority under the award of an arbitrator for lands taken compulsorily by them, and on appeal a verdict for a larger sum is given by a jury, the difference between the two sums being subsequently paid into Court, interest at £4 per cent. per annum from the date of the first payment to the date of the second payment in is payable on such difference. *Re SHAW AND THE CORPORATION OF BIRMINGHAM* 27 Ch. D. 614, [54 L. J. Ch. 51, 51 L. T. 684, 33 W. R. 74]

**ASSAULT—Mitigation—Libel published in the morning, held not to mitigate an assault on the libeller in the afternoon of the same day.** *Fraser v. Berkeley* (7 C. & P. 621) disapproved of. *KEISER v. SMITH* — 46 Amer. R. 342 (U.S.)

— Board school—Unlawful detention of scholar.  
See ELEMENTARY EDUCATION ACTS. 1.

— By servant—Master’s liability.  
See MASTER AND SERVANT. 8.

— Claim of right—Jurisdiction of justices.  
See MANDAMUS. 2.

**ASSETS—In bankruptcy.**  
See BANKRUPTCY—ASSETS.

**ASSIGNMENT—Administration bond—Creditor.**  
See ADMINISTRATOR. 3.

— Alimony—Allowance out of lunatic’s estate.  
See PRACTICE—DIVORCE. 1.

— Costs due to solicitor—Taxation of bill.  
See SOLICITOR—BILL OF COSTS. 20.

— Lease—Right of assignor to indemnity.  
See LANDLORD AND TENANT—LEASE. 1.

**ASSIGNMENT OF DEBT—Equitable Assignment—Order for Payment of Money—Specific Fund.]** An order by a creditor to his debtor to pay a sum of money to a third person is not an equitable assignment unless it specifies the fund or debt out of which the payment is to be made.

Thus, where A., a builder, being a debtor to the Plaintiff, P., but a creditor of the Defendant, handed to P., the following order signed by A. and addressed to the Defendant, who received due notice thereof: “Please pay P. the amount of his account, £42 14s. 6d. for goods supplied”:

*Held*, by Bacon, V.C., that the order did not operate as an equitable assignment. *PERCIVAL v. DUNN* — 29 Ch. D. 128, 54 L. J. Ch. 570, [52 L. T. 320]

2. — *Rent—Third Party—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (vi.).]* A landlord borrowed money of the Plaintiff, and gave him a letter addressed to his tenant (of which the tenant had notice) directing him to pay to the



**ASSIGNMENT OF DEBT**—*continued.*

Plaintiff the rent until the order should be countermanded by the Plaintiff:—*Held*, by Stephen, Mathew, and Day, JJ., that this was an absolute assignment under the above section, and that the Plaintiff could sue the tenant for the rent. *KNILL v. PROWSE* - - - 33 W. R. 163

— Building contract—Charge by builder on instalment due.

See **BANKRUPTCY**—**TRUSTEE**. 7.

— Charge on proceeds of sale.

See **AUCTIONEER**.

**ASSIZE**—Judge of—Appeal from.

See **PRACTICE**—**APPEAL**. 12.

**ASSURANCE.**

See **INSURANCE**.

**ASYLUM, LUNATIC.**

See **LUNATIC**. 1, 2, 5.

**ATTACHMENT OF DEBTS.**

See **PRACTICE**—**ATTACHMENT OF DEBTS**.

**ATTACHMENT OF PERSON.**

See **PRACTICE**—**ATTACHMENT OF PERSON**.

**ATTORNEY.**

See **SOLICITOR**.

**ATTORNEY-GENERAL**—Action to enforce statutory rights—Joinder of Attorney-General.

See **STATUTE**.

— Charity—Action for account.

See **CHARITY**. 1.

— Information by, to recover penalty—Appeal.

See **PRACTICE**—**APPEAL**. 5.

— Of Duchy of Lancaster—English information by.

See **DUCHY OF LANCASTER**.

**ATTORNEY, POWER OF.**

See **POWER OF ATTORNEY**.

**AUCTIONEER**—Assignment of Debt—Lien—Marshalling—Two Funds, one subject to Lien, the other not.] The Defendants were auctioneers and had sold for a customer a brewery, and part of the proceeds of the sale was in their hands subject to their claim for charges incurred in connection with the sale: they had also in their hands the balance of the price of some furniture sold by them for the same customer. The Plaintiff was a creditor of the Defendants' customer, and and he by letter charged the proceeds of the sale of the brewery in favour of the Plaintiff. The Defendants wrote to the Plaintiff acknowledging the receipt of the letter of charge. The Defendants afterwards paid their customer the balance of the price of the furniture, and appropriated the part of the proceeds of the sale of the brewery in their hands to the payment of their charges:—

*Held*, first, that the letter of charge and the Defendants' acknowledgment thereof amounted to a good equitable assignment in favour of the Plaintiff:—

Secondly, that the Defendants, as auctioneers, had a lien for their charges upon the part of the proceeds of the sale of the brewery in their hands:—

Thirdly, that the Defendants were at liberty to appropriate the part of the proceeds of the sale of the brewery in their hands to the payment of their charges, and were not bound to take pay-

**AUCTIONEER**—*continued.*

ment of their charges out of the price of the furniture in order to enable the Plaintiff to obtain payment of his charge, and that the doctrine of marshalling did not apply. *WEBB v. SMITH* [30 Ch. D. 192 (C.A.)]

— Authority to make contract.

See **PRINCIPAL AND AGENT**. 5.

— Commission—Solicitors' Remuneration Act, 1881.

See **SOLICITOR**—**BILL OF COSTS**. 6.

— Custom—Cheque for deposit.

See **MORTGAGE**—**POWER OF SALE**. 1.

**AWARD**—Action of tort—Reference—Death of party before award.

See **ARBITRATION**. 1.

## B.

**BAIL**—Admiralty action.

See **PRACTICE**—**ADMIRALTY**. 2, 13, 17.

— Criminal case—Indemnity of surety—Illegality.

See **CONTRACT**. 7.

**BAILIFF**—Distress—Appointment of, by judge of county court, under Agricultural Holdings Act.

See **LANDLORD AND TENANT**—**DISTRESS**. 1.

**BAILMENT**—Evidence of custom qualifying bailee's liability—Amount of diligence and care required in bailee. *KELTON v. TAYLOR*

[47 Amer. R. 284 (U.S.)]

— Larceny by bailee—Infant.

See **CRIMINAL LAW**. 12.

**BAKER**—Delivery of bread by cart without beam and scales.

See **BREAD**.

**BANKER**—Account—Joint Investments—Survivorship—Separate Estate.] Banking accounts were kept in the joint names of husband and wife, and investments in railway stock were made in their joint names. The wife survived her husband five days, having executed a will during coverture:—

*Held*, by Pearson, J., that the balances of the joint accounts and the joint investments survived to the wife, but did not pass under her will. *Re YOUNG. TRYE v. SULLIVAN* (No. 1) 28 Ch. D. 705, [54 L. J. Ch. 1065, 52 L. T. 754, 33 W. R. 729]

2. — Cheque—Liability of Collecting Banker—Crossed Cheques—16 & 17 Vict. c. 59, s. 19—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 60, 82.] A commercial traveller received seven cheques, three crossed generally and four uncrossed, drawn in favour of his employer by customers. These it was his duty to forward to his employer, and he had no authority to endorse his employer's name thereon, or pay them in to his own account. The traveller endorsed his employer's name *per pro.* on all the cheques, and paid them into his own account at his bankers, who immediately placed the amounts to the credit of his account as cash. They crossed both the three cheques crossed generally and three of the uncrossed cheques to other

**BANKER—continued.**

bankers, who obtained payment of the amounts for them from the banks upon which they were drawn. The seventh, an uncrossed one, was drawn upon themselves, and they placed the amount of this at once to the credit of the traveller. The bankers were told by the traveller who his employers were, but they never made any inquiries as to his authority to endorse cheques on behalf of his employers. The traveller, having drawn out the amounts, absconded, and never accounted to his employers for the amounts:—

*Held*, as to the six cheques not drawn on the bankers, that the bankers were liable to the employers for the amounts thereof, and were not entitled to the protection of sect. 82 of the Bills of Exchange Act, 1882, because their conduct had not been "without negligence."

But *Held*, as to the seventh cheque drawn upon themselves, that the bankers had "paid" the cheque so as to be protected by sect. 19 of 16 & 17 Vict. c. 59, or sect. 60 of the Bills of Exchange Act, 1882.

Decision of Denman, J. (51 L. T. 663, 1 C. & E. 395) varied. *BISSELL v. FOX* 53 L. T. 193 (C.A.)

3. — *Cheque—Garnishee Order served on Drawer.*] Where a debtor draws a cheque in payment of a debt, which cheque is duly honoured and paid, there is no debt owing or accruing from debtor to creditor between the giving of the cheque and payment thereof. There is no duty upon the debtor who is served with a garnishee order *nisi* between such dates to stop payment of the cheque. *ELWELL v. JACKSON* 1 C. & E. 362

— Account—Overdrafts by building society.

See BUILDING SOCIETY. 4, 5.

— Shares in banking company—Contract for sale of—Specifying numbers.

See STOCK EXCHANGE. 2, 3.

**BANKRUPTCY:—****I. ACT OF BANKRUPTCY.****II. ADMINISTRATION.****III. APPEAL.****IV. ASSETS.****V. COMPOSITION.****VI. COSTS.****VII. DISCHARGE.****VIII. DISCLAIMER.****IX. DISTRESS.****X. EVIDENCE.****XI. EXAMINATION.****XII. JURISDICTION.****XIII. MUTUAL DEALINGS.****XIV. OFFICIAL RECEIVER.****XV. ORDER AND DISPOSITION.****XVI. PETITION.****XVII. PROOF.****XVIII. PROTECTED TRANSACTION.****XIX. PROTECTION.****XX. RECEIVING ORDER.****XXI. SECURED CREDITOR.****XXII. SMALL BANKRUPTCIES.****XXIII. TRADER.****XXIV. TRUSTEE.****I. BANKRUPTCY—ACT OF BANKRUPTCY—**

*Bankruptcy Notice—Final Judgment—Judgment for Costs—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).]* At the trial of an action in the Chancery Division, upon motion for judgment in default of pleading, judgment was given ordering and adjudging that the Defendant should be perpetually restrained from practising as a solicitor at Liverpool or otherwise in violation of his covenant with the Plaintiff. And the Court declared that the partnership between the Plaintiff and the Defendant ought to be dissolved as from the date of the Plaintiff's notice, and ordered and decreed the same accordingly. And it was ordered that an inquiry should be made what was the amount of the damages which the plaintiff had sustained by reason of the Defendant's breach of covenant, and that the Defendant should within fourteen days from the date of the chief clerk's certificate, pay the amount of the damages, when certified, to the Plaintiff. And it was ordered that the Defendant should pay to the Plaintiff his taxed costs of the action. The costs were taxed and were partly paid by the Defendant. The inquiry as to damages was not prosecuted:—*Held*, that the order for the payment of costs was a "final judgment" within the meaning of sect. 4, sub-sect. 1 (g) of the Bankruptcy Act, 1883, and that the Plaintiff was entitled to serve the Defendant with a bankruptcy notice for the unpaid balance of costs. —*Ex parte Chinery* (12 Q. B. D. 342, 53 L. J. Ch. 662, 50 L. T. 342, 32 W. R. 469) explained. *Ex parte MOORE. Re FAITHFULL* 14 Q. B. D. 627, [54 L. J. Q. B. 190, 52 L. T. 376, 33 W. R. [438 (C.A.)]

2. — *Bankruptcy Notice—Application to set aside—Evidence—Action begun by Debtor to set aside judgment on which notice founded—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g). Ex parte BASAN. Re FOSTER - W. N. (1885) 12 (C.A.)*

3. — *Cessio Bonorum—Fraudulent Preference—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52).]* G., a farmer, whose lease was about to expire in September, 1884, placed all his live and dead stock in the hands of an auctioneer to realize; and, in order to prevent H., who held a judgment for £130 against him, and also a promissory note for £38, from stopping the sale, G. signed and gave the following letter addressed to the auctioneer:—"I authorize and request you to pay to H., out of the first proceeds of the sale of my farming live and dead stock (after satisfying the landlord's claim for rent) the sum of £168, being the amount due from me to him, and I hereby appropriate the sum of £168 out of the proceeds of such sale for the purpose of such payment accordingly. Dated Aug. 18th, 1884." G. then owed other debts to about £150. The goods were sold by the auctioneer on Aug. 21, and realized £276 gross. The net proceeds, after payment of rent, amounted to £142. A receiving order was made on Oct. 22. The crops on the farm sold or paid for by the incoming tenant realized £148, and G.'s furniture £12. G. had no other property. The trustee in bankruptcy claimed the £142. *Held*, by Cave, J., that H. was entitled to the £142, and the transaction in question was neither an act of bankruptcy nor a fraudulent

**I. BANKRUPTCY—ACT OF BANKRUPTCY—**  
*continued.*

preference. *Ex parte* JENKINS (OFFICIAL RECEIVER). *Re* GLANVILLE. HARRIS v. HAWKER [33 W. R. 523]

4. — *Keeping House—Intent to defeat or delay Creditors—Bankruptcy Act, 1869* (32 & 33 Vict. c. 71), s. 6 (iii.); and 1883 (46 & 47 Vict. c. 52), s. 4 (d).] Where a debtor keeps house and denies himself to a creditor, though not with the intention of defeating him, but rather with the view of gaining time for the purpose of paying his creditors, he “delays” him, and commits an act of bankruptcy within the provisions of the Bankruptcy Act. So held, by Grove and Manisty, JJ. *RICHARDSON v. PRATT* - - - 52 L. T. 614

5. — *Notice of Suspension of Payment—Verbal Declaration of Inability to pay Debts—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-ss. 1 (f), 1 (h).] An oral statement made by a debtor to a creditor that he is unable to pay his debts in full, is not a notice that he has suspended, or is about to suspend, payment of his debts, so as to constitute an act of bankruptcy within sub-sect. 1 (h) of sect. 4 of the Bankruptcy Act, 1883.—Such a notice may be given orally, but it must be given formally and deliberately, and with the intention of giving notice. *Ex parte* OASTLER. *Re* FRIEDLANDER [13 Q. B. D. 471, 54 L. J. Q. B. 23, 51 L. T. 309, 33 W. R. 126 (C.A.)]

6. — *Notice of Suspension of Payment—Composition offered—Bankruptcy Act, 1883*, s. 4 (i) (h).] A debtor having called his creditors together and having made them an offer of a certain amount in the pound, Held, by Cave and Wills, JJ., that this did not amount to a declaration of intention to suspend payment, and did not therefore constitute an act of bankruptcy. *Re* WALSH - - - 52 L. T. 694

— Bankruptcy notice—Discretion of registrar. See BANKRUPTCY—PETITION. 1.

— Notice of—Judgment recovered after. See BANKRUPTCY—PROTECTED TRANSACTION. 1.

— Relation back of trustee's title to. See BANKRUPTCY—TRUSTEE. 4—8.

— Who may avail himself of, by petitioning. See BANKRUPTCY—PETITION. 4.

**II. BANKRUPTCY—ADMINISTRATION—**

*Administration in Bankruptcy of Insolvent Estate—Discovery of Debtor's Property—Power to summon Person to be examined—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 27, 125—Rule 58 (*Bankruptcy Rules*, 1883).] The provisions of sect. 27 of the Bankruptcy Act, 1883, do not apply to an administration of the estate of a person dying insolvent under sect. 125 of the Act.—There is no power in cases of such administration, either under sect. 27 or under rule 58 (*Bankruptcy Rules*, 1883), to summon a person to be examined for the purpose of discovery of the deceased debtor's estate. *Ex parte* HEWITT. *Re* HEWITT [15 Q. B. D. 159, 54 L. J. Q. B. 402, 53 L. T. 156]

2. — *Administration of Insolvent Estate—Transfer to Court of Bankruptcy—Discretion of Court—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 125.] The power given by sect. 125 of the

**II. BANKRUPTCY—ADMINISTRATION—**  
*contd.*

Bankruptcy Act, 1883, to transfer the proceedings in an action brought for the administration of an insolvent estate to the Court of Bankruptcy, is a discretionary one, and it will not be exercised where the estate is small, the number of creditors is small, and considerable expense has been already incurred in Chambers in the proceedings under an administration judgment.

*Semble*, that an application for transfer can only be made by a creditor who has absolutely proved his debt. *Re* WEAVER. HIGGS v. WEAVER [29 Ch. D. 236, 54 L. J. Ch. 749, 52 L. T. 512]

[33 W. R. 874]

3. — *Insolvent Estate—Transfer of Creditor's Administration Action to Bankruptcy Court—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 125, (iv.) (x.).] The testator was removed in Oct., 1883, to a lunatic asylum in Scotland. Up to that date he had carried on business in England. In Nov., 1884, he died insolvent, and an administration action was commenced by a creditor. On motion by the plaintiff,

*Held*, by Bacon, V.C., that the Court had jurisdiction to make an order transferring the proceedings to the county court within the jurisdiction of which the testator had carried on business. *SENHOUSE v. MAWSON* - - - 52 L. T. 745

[W. N. (1885) 119]

**III. BANKRUPTCY—APPEAL—Jurisdiction—Judgment Summons—Judgment under £50—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 103, 104.] Under the Bankruptcy Act, 1883, s. 103—which enables the jurisdiction under s. 5 of the Debtors Act, 1869, to be delegated to and exercised by the bankruptcy registrars of the High Court, and s. 104, by which in bankruptcy matters, an appeal lies from the order of the High Court to the Court of Appeal—an appeal from an order of the judge having jurisdiction in bankruptcy respecting the commitment of a judgment debtor must be made to the Court of Appeal and not to the Divisional Court. So held, by Grove, J., and Huddleston, B. *GENESE v. LASCELLES***

[13 Q. B. D. 801, 53 L. J. Q. B. 578, 52 W. R. 794]

2. — *Jurisdiction—Strangers to Bankruptcy—Question between—Bankruptcy Amendment Act, 1884* (47 & 48 Vict. c. 9).] A solicitor agreed to conduct certain bankruptcy proceedings on the terms that his costs should not exceed £10. In the course of the proceedings his clients left him and employed other solicitors, and he sent in a bill for a larger amount than £10. The county court judge, sitting in bankruptcy, declared the agreement to be void. On an appeal from his decision the Respondent objected that the Court, sitting as a Court of Appeal in bankruptcy matters only, had no jurisdiction to deal with the question at all. Held, by Cave and Wills, JJ., that, by virtue of the above Act, the Court had jurisdiction to hear the appeal. *Ex parte* PAYTON. *Re* OWEN - - - 52 L. T. 626

3. — *Notice of Appeal—Time—Notice sent by Post—Trustee—Costs—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 142—*Bankruptcy Rules*, 1883, rr. 112, 114 A., 116 A. (*Rules of 11th of April, 1884*)—*Rules of Supreme Court, 1883, Order LVIII.*, r. 15.] If notice of a bankruptcy

**III. BANKRUPTCY—APPEAL—continued.**

appeal is sent by post as provided by sect. 142 of the Bankruptcy Act, 1883, *quære* whether the notice will be in time unless the letter is received by the Respondent before the expiration of the twenty-one days limited for appealing.—A trustee in bankruptcy who is served with notice of an appeal, and who appears, and only asks for his costs, will not be allowed his costs of appearance. *So held*, by Mathew and Cave, JJ. *Ex parte ARDEN*. *In re ARDEN*. *ARDEN v. DEACON*

[14 Q. B. D. 121, 51 L. T. 712, 33 W. R. 460]

**4. — Preliminary Objection—Notice—Costs.]**

A Respondent to an appeal who intends to rely on a preliminary objection ought to give notice to the Appellant of his intention so to do.—If he does not, and the objection is successful, the appeal will be dismissed without costs.—*In re Speight* (13 Q. B. D. 42) followed. *Ex parte BLEASE*. *Re BLINKHORN* - 14 Q. B. D. 123,

[33 W. R. 432]

**5. — Preliminary Objection—Notice—Costs.]**

The solicitor of a Respondent, if he is aware of a preliminary objection to an appeal, ought, as a matter of courtesy, to inform his opponent of it without delay, but the omission to do so is not, if the appeal is dismissed on the preliminary objection, a sufficient reason for depriving the Respondent of the costs of the appeal.—*Re Speight* (13 Q. B. D. 42) and *Ex parte Blease* (*supra*) not followed. *Ex parte SHEAD*. *Re MUNDY*

[15 Q. B. D. 338 (C.A.)]

**6. — Rejection of Proof by Trustee—Notice of Motion—Bankruptcy Rules, 1883, rr. 19, 174.]**

If a creditor desires to appeal against the rejection of his proof by the trustee he must give notice of motion in the usual way under rule 19 of the Bankruptcy Rules, 1883, and within the twenty-one days limited by the 174th rule. The old practice of applying to the Court, in the first instance, to fix a time and day for hearing such an application no longer obtains. *Ex parte MORRISON*. *Re GILLESPIE*. (No. 1) 14 Q. B. D. 385,

[52 L. T. 55, 33 W. R. 751]

**7. — Small Bankruptcy—No leave to Appeal—Rules—*Ultra vires*—Bankruptcy Act, 1883**

(46 & 47 Vict. c. 52), ss. 104, 121 (iii.), 127 (ii).—*Bankruptcy Rules*, 1883, r. 199 (v.).] Upon an appeal against the decision of a county court registrar a preliminary objection was made, that, the case being one of a small bankruptcy under sect. 121 of the above Act, the leave to appeal required by rule 199 had not been obtained. On a contention that this rule was *ultra vires*, *Held*, by Cave and Wills, JJ., that the appeal could not be heard; that this right of appeal was not a common law, but a statutory right, and that the same statute which gave the right of appeal was competent to give an authority to modify the right by general rules framed in a prescribed manner.

*Quære* (*per* Wills, J.), whether after rules have been laid before Parliament for three weeks in accordance with sect. 127 (ii.), the question whether they are *ultra vires* can be raised. *Ex parte DALE*. *Re DALE* - 52 L. T. 627, 33 W. R. 476

**8. — Solicitor's right of Audience—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 151.]** *Per* Cave and Wills, JJ.: a solicitor has a right of

**III. BANKRUPTCY—APPEAL—continued.**

audience on an appeal to the Divisional Court from a county court sitting in bankruptcy. *Ex parte REYNOLDS*. *Re BARNETT* 15 Q. B. D. 169,

[54 L. J. Q. B. 354, 53 L. T. 448, 33 W. R. 715]

**9. — Time—Extension of—Interlocutory Appeal—Mistake of Solicitor—O. LVIII., r. 15—Bankruptcy Rules, 1883, r. 112. *Ex parte* TIPPETT. *Re TIPPETT* - W. N. (1885) 157 (C.A.)**

— Costs of.

*See* BANKRUPTCY—COSTS.

— County court—Qualified leave to appeal.

*See* COUNTY COURT. 2.

**IV. BANKRUPTCY—ASSETS—Power of Appointment—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 15, sub-s. 4—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (ii).]** A debtor had a general power of appointment by deed or will:—

*Held*, by Pearson, J., that his trustee in liquidation had no power after the death of the debtor to appoint the property the subject of the power. *NICHOLS* (*or* *NICHOLLS*) *to* *NIXEY* *and* *COLECLOUGH* [29 Ch. D. 1005, 52 L. T. 803, 33 W. R. 840]

**2. — Setting aside "Salary or Income" of Bankrupt for Creditors—Future Earnings of Professional Man—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 90.]** The word "income" in sect. 90 of the Bankruptcy Act, 1869, applies only to an "income" *ejusdem generis* with a "salary," and does not enable the Court to set aside for the benefit of the creditors of a professional man, who is an undischarged bankrupt, any part of his prospective and contingent earnings in the exercise of his personal skill and knowledge. *Ex parte BENWELL*. *Re HUTTON* 14 Q. B. D. 301, 54 L. J. [Q. B. 53, 51 L. T. 677, 33 W. R. 242 (C.A.)]

— Gift by bankrupt of chattels.

*See* GIFT. 1.

— Loan for specific purpose—Following money lent.

*See* TRUSTEE—DUTIES.

**V. BANKRUPTCY—COMPOSITION—Approval of Court—Reasonableness—Discharge of Debtor left to Discretion of Committee of Inspection—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 18.]** A

scheme for the arrangement of the affairs of debtors who had presented a bankruptcy petition, duly assented to by the creditors, as provided by sect. 18 of the Bankruptcy Act, 1883, contained, *inter alia*, provisions for the appointment of a trustee and a committee of inspection, and also a provision that "the debtors shall be discharged when the committee of inspection shall so resolve":—*Held*, that the latter provision was not in accordance with the intention of the Act, and was unreasonable, and that, though the debtors asked that the scheme might be approved by the Court, the approval ought not to be given. *Ex parte CLARK*. *Re CLARK* 13 Q. B. D. 426, 53 L. J. [Ch. 1063, 51 L. T. 594, 33 W. R. 775 (C.A.)]

**2. — Approval of Court—Reasonableness—Rash and Hazardous Speculation—Retrospective Effect of Act—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 18, 28, sub-s. 3 (d).]** In determining whether a composition accepted by creditors under the provisions of sect. 18 is reasonable, the Court must exercise its own judgment though it will take into account the fact that the creditors

**V. BANKRUPTCY—COMPOSITION—continued.**

are mainly interested in the question.—The Court must have regard to the debtor's assets and liabilities, and if, for a large proportion of the debts set down in his statement of affairs proofs have not been tendered, or if the Court considers that the proofs which have been tendered require to be investigated by a trustee, the Court ought to decline to approve of the composition.—The Court of Appeal will not overrule the exercise of the discretion of the judge of first instance as to the approval of a composition, unless clearly satisfied that he was wrong.—The quasi penal provisions of sub-sects. 2 and 3 of sect. 28 are retrospective, *i.e.*, they apply to acts done by the debtor before the Act came into operation, if the proceedings are instituted under that Act.—A trader, after he knew that one of his debtors who owed him about £32,000 was in pecuniary difficulties, allowed him, in the course of eighteen months, to increase his debt to £65,000, and to the extent of £11,000 this increase was due to accommodation bills. The trader then stopped payment, and presented a bankruptcy petition. The debt of £65,000 was apparently irrecoverable:—*Held*, by Mathew, Cave, and Day, JJ., that the debtor had been guilty of rash and hazardous speculations, and that on this ground (*inter alia*) the Court ought to refuse to approve of a composition which his creditors had, under the provisions of sect. 18, agreed to accept. *Ex parte ROGERS. Re ROGERS* 13 Q. B. D. 438, [33 W. R. 354]

3. — *Approval of Court—“Rash and Hazardous Speculations”*—*Bankruptcy Act, 1883, ss. 18, 28.* *Ex parte YOUNG. Re YOUNG* [W. N. (1885) 12 (C. A.)]

4. — *Approval of Court—Discretion of Registrar—Wishes of Creditors—Evidence of Facts justifying Court in refusing to approve—Report of Official Receiver—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 18, 28.* The report of the official receiver is under sect. 18 of the Bankruptcy Act, 1883 (as it is under sect. 28), *prima facie* evidence of the statements contained in it. The Registrar, in deciding whether he will or will not approve a composition or scheme of arrangement accepted by the creditors of a bankrupt, is exercising a judicial discretion, and the Court of Appeal will not readily set aside his order. It is the duty of the Registrar to form his own judgment, and not to be influenced by the wishes of the creditors. *Ex parte CAMPBELL. Re WALLACE* 15 Q. B. D. [213, 54 L. J. Q. B. 382, 53 L. T. 208 (C.A.)]

5. — *Assent of Creditor to—Creditor carrying Composition scheme by Proxies held by him—Assent “otherwise than by Proving Debt and accepting Dividend”*—*Estoppel—32 & 33 Vict. c. 62, s. 15—32 & 33 Vict. c. 71, s. 126—46 & 47 Vict. c. 52, s. 18.* D., a trader, being in insolvent circumstances, T., one of his creditors, took an active part in procuring the acceptance of a scheme of composition of D.'s affairs, and obtained proxies from D.'s other creditors. At a meeting of the creditors T. withdrew the proof of his debt against D.'s estate on the ground that, owing to a fraudulent statement by D. on an earlier occasion, he had been induced to forbear to press his claim against D. T., however, proposed a resolu-

**V. BANKRUPTCY—COMPOSITION—continued.**

tion that a composition of 11s. 3d. in the £ should be accepted in satisfaction of the debts due from D., and by using the proxies held by him he carried the resolution. A dividend of 11s. 3d. in the £ was received by T. on his proof. He subsequently brought an action in the County Court for the unpaid balance of his debt, and the County Court Judge gave a verdict and judgment for the amount claimed. D., the Defendant, having obtained a rule *nisi* to set aside the verdict and judgment for a new trial:—*Held*, by Pollock, B., and Day, J., on the argument of the rule, that T., having acted as he did, had assented to the composition otherwise than by proving his debt and accepting a dividend on it, and that he could not maintain an action for the unpaid balance of his debt, and that judgment should be entered for the Defendant. *THORP v. DAKIN*—52 L. T. 856

**6. — Preference of some Creditors—Fraud.]**

The essence of a composition arrangement between a debtor and his creditor is equality between the creditors, and consequently a creditor who has executed a composition deed is entitled to repudiate it, if he afterwards discovers that other creditors have been induced to execute the deed by means of a secret bargain for a payment to them in excess of the composition, even if the bargain was made after his own execution of the deed.—This principle applies even if the additional payment is to be made at the expense of a third person, provided that the bargain is made with the debtor's knowledge, and it applies whether the composition arrangement is made under the provisions of a statute or not. *Ex parte MILNER. Re MILNER* 15 Q. B. D. 605, 54 L. J. Q. B. 425, [33 W. R. 867]

7. — *Trustee—Default by.* Where a trustee for creditors in composition proceedings under the Bankruptcy Act of 1869 might, but for his default, have been in funds to pay an instalment on the due date, the legal consequences, so far as the debtor is concerned, are the same as if the trustee had been in funds. *BURGESS v. GILLESPIE* [1 C. & E. 321]

See also CREDITORS' DEED.

— Secured creditor—Abandonment of security. See BANKRUPTCY—SECURED CREDITOR. 1.

— Superseded by bankruptcy—Relation back of trustee's title.

See BANKRUPTCY—TRUSTEE. 8.

**VI. BANKRUPTCY—COSTS—Appeal—Official Receiver.]** An order made by a county court, on the application of the official receiver, setting aside a payment made by a debtor as a fraudulent preference, having been reversed on appeal:—*Held*, by Mathew and Cave, JJ., that the costs of the Appellants and of the official receiver in both courts must be paid out of the debtor's assets, the costs of the Appellants having priority. *Ex parte LEICESTERSHIRE BANKING COMPANY. Re DALE* [14 Q. B. D. 48, 33 W. R. 354]

2. — *Costs as between Solicitor and Client—Bankruptcy Rules, 1883, r. 98.* Rule 98 of the Bankruptcy Rules, 1883, only empowers the Court to direct that costs shall be taxed and paid as between solicitor and client at the time when the order is made awarding the costs. If

**VI. BANKRUPTCY—COSTS—continued.**

such a direction is not given at that time, the Court has no power to give it subsequently. *Ex parte SHOOLBRED. Re ANGELL* 14 Q. B. D. 298, [54 L. J. Q. B. 87, 51 L. T. 678, 33 W. R. 202 (C.A.)]

3. — *Shorthand Notes.*] The costs of shorthand notes are never allowed unless an application is made at the commencement of the hearing. *Ex parte REID. Re GILLESPIE* - 33 W. R. 707

4. — *Small Bankruptcy—Personal Order against Official Receiver—No Estate.*] The official receiver, acting as trustee of an estate being administered under sect. 121 of the Bankruptcy Act, 1883, on an unsuccessful motion by him was ordered personally to pay the Respondent's costs, with liberty to take the costs out of the estate, if any. *Ex parte JENKINS (OFFICIAL RECEIVER). Re GLANVILLE. HARRIS v. HAWKER* [33 W. R. 523]

— Appeal—Preliminary objection—Notice of. *See* BANKRUPTCY—APPEAL. 4, 5.

— Bankruptcy of broker—Shares bought for applicant—Deposited as security—Sale. *See* STOCK EXCHANGE. 1.

— Landlord's notice to disclaim—Trustee's neglect. *See* BANKRUPTCY—DISCLAIMER. 6.

— Taxation—Costs of—Solicitor to trustee in bankruptcy. *See* SOLICITOR—BILL OF COSTS. 21.

— Trustee appearing on appeal. *See* BANKRUPTCY—APPEAL. 3.

**VII. BANKRUPTCY—DISCHARGE—Certificate of Conformity—Effect of Suspending Order—Bankruptcy Act, 1842 (5 & 6 Vict. c. 122), ss. 37, 39—Bankrupt Law Consolidation Act, 1849 (12 & 13 Vict. c. 106), s. 199.]** In July, 1848, an order was made that the grant of a certificate of conformity to a bankrupt be suspended for three years.

During the period of suspension, the Bankruptcy Act of 1849 came into operation; which provided (sect. 199) that "every certificate of conformity, allowed by any Commissioner before the time appointed for the commencement of this Act, though not confirmed according to the laws in force before that time, shall discharge the bankrupt from all debts due by him when he became bankrupt, and from all claims and demands made provable under the "flat":—

*Held*, by Pearson, J., that, as, by virtue of that section, confirmation of the order of July, 1848, was no longer required, that order became, at the expiration of the period of suspension, of itself a complete discharge to the bankrupt, and that property acquired by him after the expiration of that period belonged to him and not to the assignee in the bankruptcy. *Re DOVE. BOUSFIELD v. DOVE* [27 Ch. D. 687, 53 L. J. Ch. 1099, 33 W. R. 197]

2. — *Condition—Contracting Debt without reasonable or probable Ground of Expectation of being able to pay it—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 28, sub-s. 3 (c).]* Two partners, who had no capital of their own, commenced business by means of borrowed money, assigning to the lender as security their leasehold premises, the goodwill of their business, and all their existing and after-acquired stock-in-trade, fixtures, fur-

**VII. BANKRUPTCY—DISCHARGE—continued.**

niture, and book-debts, giving him the power to take possession at any time. They contracted debts in carrying on the business, and became bankrupts. The mortgagee took possession under his deed, and his security was insufficient. The registrar granted the bankrupts a discharge, on condition of their consenting to judgment being entered up against them by the trustee for the whole of the debts provable in the bankruptcy:—*Held*, that the bankrupts had contracted debts without having at the time of contracting them any reasonable or probable ground of expectation of being able to pay them, and that the registrar's decision was right. *Ex parte WHITE. Re WHITE* [14 Q. B. D. 600, 54 L. J. Q. B. 384, 33 W. R. 670] (C.A.)

3. — *Condition—"Rash and hazardous speculations"—Conduct of Bankrupt before Commencement of Act—Retrospective Effect of Act—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 28—Costs—Appeal.*] Upon an application by a bankrupt under sect. 28 of the Bankruptcy Act, 1883, for an order of discharge, the Court may take into consideration conduct of the bankrupt of the nature mentioned in sub-sect. 3, though it took place before the commencement of the Act, and in that sense sect. 28 is retrospective.—*Re White* (9 L. T. (N.S.) 702) explained and distinguished.—A solicitor who had no capital of his own bought land in the city of London by means of money which he borrowed on the security of mortgages of the land, his intention being to sell it at an advanced price. He afterwards borrowed more money on a further mortgage for the purpose of building on the land. The land was valued by professional valuers at considerably more than the amount borrowed. He was unable to sell or to let the property, and he became a bankrupt:—*Held*, that he had been guilty of "rash and hazardous speculations," and that the registrar was right in granting him an order of discharge subject to the condition that, after setting aside out of his earnings £300 a year for the maintenance of himself and his family, he should pay over to the official receiver the balance of his earnings, until he should have paid 10s. in the pound on all the debts which had been, or might be, proved in the bankruptcy.—Creditors served with notice of an appeal by a bankrupt from an order granting him a conditional discharge will not be allowed their costs of appearing on the hearing of the appeal when the official receiver or trustee appears. *Ex parte SALAMAN. Re SALAMAN* 14 Q. B. D. 936, 54 L. J. Q. B. 238, [52 L. T. 378 (C.A.)]

— Left to discretion of committee of inspection. *See* BANKRUPTCY—COMPOSITION. 1.

**VIII. BANKRUPTCY—DISCLAIMER—Agreement for a Lease—"Land burdened with onerous covenants"—"Property"—Bankruptcy Act, 1883, ss. 44, 55, 168.]** The right of disclaimer conferred on trustees by sect. 55 of the Bankruptcy Act, 1883, is not limited to property of the bankrupt divisible amongst his creditors as defined by sect. 44, but extends to any property as defined by sect. 168 from which no benefit can accrue to the bankrupt's estate. A debtor held his business premises for a term of years under

**VIII. BANKRUPTCY—DISCLAIMER—contd.**

an agreement for a lease, and entered into a binding contract for the sale and assignment of his business and his business premises to a company, but became bankrupt before the completion of the contract:—*Held*, by Field, J., that the debtor's interest in the agreement for a lease was in the nature of land burdened with onerous covenants which his trustee in bankruptcy could under the circumstances disclaim. *Ex parte* MONKHOUSE. *Re* MAUGHAN. 14 Q. B. D. 956, [54 L. J. Q. B. 128, 33 W. R. 308]

2. — *Lease—Leave of Court—Conditions imposed—Bankruptcy Act, 1869* (32 & 33 Vict. c. 71), s. 23—*Bankruptcy Rules, 1871*, r. 28.] A lease of land and minerals was granted to two partners in trade as joint tenants. The partnership was afterwards dissolved, on the terms that the business should be carried on by one of the partners alone, and that he should purchase the interest of the other for £12,000, which was to be paid in forty equal half-yearly instalments. The retiring partner covenanted that he would stand possessed of his share and interest in the demised premises in trust for the continuing partner. The continuing partner covenanted with the retiring partner to pay the £12,000 in the manner agreed upon, and assigned to him the buildings, machinery, and fixtures on the demised premises by way of mortgage to secure the payment of the £12,000, and covenanted that the leasehold premises should stand charged therewith. A year afterwards the continuing partner filed a liquidation petition, under which a trustee of his property was appointed. The trustee occupied the demised property for some time with a view to the benefit of the debtor's estate. The rent due under the lease was paid to the landlord by the retired partner:—*Held*, that leave to disclaim the debtor's interest in the lease ought to be given to the trustee only on condition of his paying to the retired partner the rent of the premises from the date of the trustee's appointment until the day when his beneficial occupation thereof ceased. *Ex parte* GOON. *Re* SALKELD. 13 Q. B. D. 731, 54 L. J. Q. B. 96, [51 L. T. 876, 33 W. R. 22 (C.A.)]

3. — *Lease—Covenant not to use Hay, Straw, &c.*—56 Geo. 3, c. 50, s. 11—*Bankruptcy Act, 1869* (32 & 33 Vict. c. 71), ss. 119, 125.] The enactment in statute 56 Geo. 3, c. 50, sect. 11, that the assignee of any bankrupt shall not take or use any hay, straw, &c., on any farm of the bankrupt in any other way than the bankrupt ought to have done, is still in force, and applies to a trustee in bankruptcy or liquidation under the Bankruptcy Act, 1869.

A lessee was bound by the covenants in his lease not to sell the hay, straw, &c., grown on his farm without the consent of the landlord. The lessee became a liquidating debtor under the Bankruptcy Act, 1869, sect. 125, and the trustee in the liquidation disclaimed the lease:—

*Held*, that the trustee was bound by 56 Geo. 3, c. 50, sect. 11, notwithstanding the disclaimer, and an injunction was granted to restrain him from selling the hay, straw, &c., grown on the farm. *LYBBE v. HART*. 29 Ch. D. 8, 54 L. J. Ch. 860, [52 L. T. 634 (C.A.)]

4. — *Lease—Landlord's Claim for Com-*

**VIII. BANKRUPTCY—DISCLAIMER—contd.**

*pensation—Jurisdiction—Bankruptcy Act, 1883*, ss. 51, 121—*Bankruptcy Rules, 1883*, r. 232.] Where an order is made under sect. 121 of the Bankruptcy Act, 1883, for the summary administration of a bankrupt's estate, and the trustee, in pursuance of the power conferred on him by rule 232 of the Bankruptcy Rules, 1883, disclaims, without any application to the Court, the leasehold premises of the bankrupt, the Court has no jurisdiction to give any compensation to the landlord out of the bankrupt's estate for the use and occupation by the trustee of the leasehold premises for the purposes of the bankruptcy, even although a benefit has thereby resulted to the estate. *Ex parte* ZERFASS. *Re* SANDWELL. 14 Q. B. D. 960, [54 L. J. Q. B. 323, 52 L. T. 692, 33 W. R. 522]

5. — *Leaseholds—Mortgage—Superior Landlord—Form of Order—Bankruptcy Act, 1883*, s. 55, sub-s. 6.] On a disclaimer of leaseholds by a trustee in bankruptcy under sub-sect. 6, sect. 55, of the Bankruptcy Act, 1883, the landlord has not such an interest in the "disclaimed property" as to be entitled to a vesting order under the sub-section.—The right to a vesting order is only conferred on a person claiming an interest in the property through or under the bankrupt.—Where in such a case a mortgagee does not appear on the trustee's application to disclaim, the proper course is to order that the mortgagee be excluded from all interest in and security upon the property unless he shall by a short date declare his option to take a vesting order in the terms of the sub-section. So *held*, by Cave, J. *Ex parte* TURQUAND. *Re* PARKER AND PARKER (No. 1). 14 Q. B. D. 405, [51 L. T. 667, 33 W. R. 752]

6. — *Practice—Landlord's Notice—Trustee's Neglect—Costs—Bankruptcy Act, 1883*, s. 55, sub-s. 4.] When a landlord gives a trustee notice under sub-sect. 4 of the 55th section of the Bankruptcy Act, 1883, requiring him to decide whether he will disclaim or not the bankrupt's leaseholds, and the trustee declines or neglects within the twenty-eight days limited by the sub-section to give notice whether he disclaims or not, and subsequently applies to the Court for leave to disclaim, he may render himself personally liable to the payment of rent and costs.—So *held* by Cave, J., *Ex parte* MACKAY. *Re* PAGE. 14 Q. B. D. 401, [33 W. R. 826]

**IX. BANKRUPTCY—DISTRESS—Money due to Gas Company for Gas supplied—Preferential Debt—Rent—Landlord—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 34.] By their special Act (39 & 40 Vict. c. cxix., s. 44) the corporation of Walsall were empowered to "recover from any person any rent or charge due to them by him for gas supplied, by the like means as landlords are for the time being by law allowed to recover rent in arrear."—*Held*, that, after the filing of a liquidation petition by a customer, the corporation were entitled as against the trustee in the liquidation to levy a distress in respect of a sum due by the debtor for gas supplied to him before the filing of the petition:—*Held*, also, that the corporation were not within the meaning of sect. 34 of the Bankruptcy Act, 1869, "other persons" to whom any rent was due by the debtor, but that, by virtue of sect. 44 of the special Act, they were en-**

**IX. BANKRUPTCY—DISTRESS—continued.**

titled to the rights given to landlords by sect. 34. —The payment due to a gas company for gas supplied, though it is called "rent" in some Acts of Parliament, is not really of the nature of rent, and consequently a gas company does not come within the words "other person to whom any rent is due" in sect. 34 of the Bankruptcy Act, 1869. Those words apply only to a person who, though he is not the landlord of the bankrupt, fills a position analogous to that of a landlord, because he is entitled to receive that which is "rent" strictly so called.—Decision of Cave, J., affirmed, but on a different ground.—*Ex parte Birmingham Gas Light Co.* (L. R. 11 Eq. 615) and *Ex parte Hill* (6 Ch. D. 63) commented on. *Ex parte HARRISON.* *Re PEAKE* 13 Q. B. D. 753, [53 L. J. Ch. 977, 51 L. T. 878 (C.A.)]

**X. BANKRUPTCY—EVIDENCE—Affidavit sworn Abroad—British Vice-Consul—Notarial Certificate** —18 & 19 Vict. c. 42, ss. 1, 2, 3—*Bankruptcy Act*, 1883, s. 135—*Schedule I*, r. 14—*Bankruptcy Rules*, 1883, r. 50.] When an affidavit or proof in bankruptcy is sworn abroad before a British consul, or vice-consul, a notarial certificate in verification of the signature and qualification of the consul, or vice-consul, is not required. The notarial certificate is only required when such an affidavit or proof is sworn before a foreign functionary. *Ex parte MAGEE.* *Re MAGEE* [15 Q. B. D. 332, 54 L. J. Q. B. 394, 33 W. R. 655]

— Application to set aside bankruptcy notice.

*See* BANKRUPTCY—BANKRUPTCY NOTICE.

2.

— Proof of debt.

*See* BANKRUPTCY—PROOF. 3, 5, 6.

— Report of official receiver.

*See* BANKRUPTCY—COMPOSITION. 4.

**XI. BANKRUPTCY—EXAMINATION—Life Insurance—Questions necessary for Effecting—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 19—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 24.] A bankrupt is not compellable to answer questions, or to submit to a medical examination, the sole object of which is to enable an insurance to be effected on his life with a view to the better or more profitable realization of his life interest in certain property. *Ex parte BULLOCK* (OFFICIAL RECEIVER). *Re GARNETT* 55 L. J. Q. B. 77, [34 W. R. 79, W. N. (1885) 192]**

2. — *Solicitor's Right of Audience—Examination of a Debtor by a Solicitor—Solicitor to be authorized in Writing—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 17, sub-s. 4.] The Bankruptcy Act, 1883, s. 17, sub-s. 4, enacts with reference to the public examination of a debtor under that Act, "that any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs, and the causes of his failure":—*Held*, that a solicitor who appears at a bankruptcy court for a creditor who has tendered a proof, is the creditor's representative within the meaning of that subsection, and is therefore not entitled so to question the debtor without being authorised in writing and producing his authority if required by the Court to do so. *Query*, if such solicitor, when his right of audience has been so denied to

**XI. BANKRUPTCY—EXAMINATION—contd.**

him, is "a party," within the meaning of sect. 43 of the County Courts Act, 1856 (19 & 20 Vict. c. 108), who is entitled to apply to the Superior Court for a rule to compel the county court judge to give him audience. *REG. v. REGISTRAR OF GREENWICH COUNTY COURT* 15 Q. B. D. 54, [54 L. J. Q. B. 392, 33 W. R. 671 (C.A.)]

— Administration of insolvent estate.

*See* BANKRUPTCY—ADMINISTRATION. 1.

**XII. BANKRUPTCY—JURISDICTION—Power of County Court to restrain Proceedings in High Court—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 100, 102, 168.] Under the Bankruptcy Act, 1883, a county court sitting in bankruptcy has no power to restrain proceedings in an action in the High Court.—Decision of Cave and Wills, JJ., reversed.—There is no absolute rule that a question relating to the estate of a bankrupt ought to be determined by the Court of Bankruptcy, and not by the High Court, whenever the trustee in the bankruptcy is, by virtue of the bankruptcy law, claiming by a higher title than that of the bankrupt himself. It is a matter of judicial discretion in each case how the question shall best be tried.—In such a matter the Court of Appeal ought not readily to overrule the discretion of the bankruptcy judge. *Ex parte REYNOLDS.* *Re BARNETT* 15 Q. B. D. 169, 54 L. J. Q. B. 354, [53 L. T. 448, 33 W. R. 715 (C.A.)]**

2. — *Registrar—Proceedings begun under Act of 1869—Bankruptcy Acts*, 1869 (32 & 33 Vict. c. 71), s. 67; and 1883 (46 & 47 Vict. c. 52), ss. 93, 94, 99, 127, 169 (iii).—*Bankruptcy Rules*, 1883, rr. 5, 264.] The jurisdiction which Registrars had under the Act of 1869 is preserved by sect. 169 (iii.) of the Act of 1883, in respect of proceedings pending when the latter Act came into operation, and Rule 264 of the Bankruptcy Rules, 1883, which provides for the exercise of their jurisdiction, is a valid rule, properly made in pursuance of sect. 127 of the 1883 Act. *Ex parte EDWARDS.* *Re HOME.* 54 L. J. Q. B. 447, W. N. [(1885) 133 (C.A.)]

— Appeal.

*See* BANKRUPTCY—APPEAL. 1, 2.

— Bankruptcy petition—Dismissal—Adjournment.

*See* BANKRUPTCY—PETITION. 2.

— County Court.

*See* COUNTY COURT. 2, 3.

— Disclaimer of lease—Landlord's claim for compensation.

*See* BANKRUPTCY—DISCLAIMER. 4.

— Inquiry into consideration for judgment debt on which petition founded.

*See* BANKRUPTCY—RECEIVING ORDER. 3.

— Petition presented in wrong Court.

*See* BANKRUPTCY—RECEIVING ORDER. 2.

— Removal of trustee.

*See* BANKRUPTCY—TRUSTEE. 3.

**XIII. BANKRUPTCY—MUTUAL DEALINGS—Bill accepted and paid by Creditor after Notice of Debtor's Bankruptcy—Set-off—Bankruptcy Act, 1883, s. 38.] Where there are mutual dealings between a debtor and his creditors, the line as to set-off must, as a general rule, and in the absence of special circumstances, be drawn at the date of**



**XIII. BANKRUPTCY—MUTUAL DEALINGS—continued.**

the commencement of the bankruptcy.—*Ex parte Theys* (25 Ch. D. 587, 53 L. J. Ch. 1008, 50 L. T. 545, 32 W. R. 601) followed.—*Elliott v. Turquand* (7 App. Cas. 79, 51 L. J. P. C. 1, 45 L. T. 771) distinguished. *Ex parte REID. Ex parte MORRISON. Re GILLESPIE* - 14 Q. B. D. 963, [54 L. J. Q. B. 342, 52 L. T. 692, 33 W. R. 707]

**XIV. BANKRUPTCY—OFFICIAL RECEIVER—**

*Expenses paid by, Priority of—Composition accepted—Bankruptcy Act, 1883, ss. 18, 70—Bankruptcy Rules, 1883; rr. 105, 163, 249.]* When the official receiver carries on a debtor's business, and makes payments out of his own pocket for the purpose, and a composition is then sanctioned, the proper order for the County Court Judge to make is, that the official receiver shall forthwith deliver up possession of the debtor's estate to the trustee under the composition, and that the trustee shall reimburse the official receiver out of the first moneys which come into his hands from the realisation of the assets.

*Semble*, the official receiver is not entitled as a condition precedent to delivering the debtor's estate into the trustee's hands to demand payment of the amount spent by him from the trustee, or an undertaking to pay the same as a first charge upon the assets.

The Court of Appeal refused leave to appeal from the above decision (*see* W. N. (1884) 220). *Ex parte BOARD OF TRADE. Re TAYLOR*

[51 L. T. 711, W. N. (1884) 219]

2. — *Powers when acting as Trustee—Power to sell Bankrupt's Property—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 10, 20, 21, 54, 56, 68–70, 121.]* The official receiver, when acting as trustee in a bankruptcy in the interval between the adjudication and the appointment of a trustee by the creditors, has power to sell the bankrupt's property, even though it be not of a perishable nature.—*Decision of Cave, J.* (14 Q. B. D. 407, 52 L. T. 185, 33 W. R. 262), reversed. *Ex parte BOARD OF TRADE. Ex parte TURQUAND. Re PARKER* 15 Q. B. D. 196, 54 L. J. Q. B. 372, [52 L. T. 670 (C.A.)]

— Costs of.

*See* BANKRUPTCY—COSTS. 1, 4.

— Report of—Evidence.

*See* BANKRUPTCY—SMALL BANKRUPTCIES: BANKRUPTCY—COMPOSITION. 4.

**XV. BANKRUPTCY—ORDER AND DISPOSITION—**

*Shares—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.]* J., who carried on business as a stockbroker, silversmith, and watchmaker, deposited with his bankers the certificates of thirty shares in a joint stock company as security for the balance of his overdrawn account. There was no formal transfer of the shares. The company had notice of the deposit on the 31st of January, 1884. On the 2nd of February a petition in bankruptcy was filed against J., and a receiving order made, and he was subsequently adjudged bankrupt. The act of bankruptcy relied on was committed on January 27th:—*Held*, by Cave and Wills, JJ., that the shares were not at the commencement of the bankruptcy "in the

**XV. BANKRUPTCY—ORDER AND DISPOSITION—continued.**

possession, order, or disposition of the bankrupt in his trade or business," within s. 44 of the Bankruptcy Act, 1883. *Ex parte NOTTINGHAM AND NOTTINGHAMSHIRE BANK. Re JENKINSON.*

[15 Q. B. D. 441, 54 L. J. Q. B. 601]

2. — *Shares in Incorporated Company—Chose in Action—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. iii.]* B. and T. were partners as stockbrokers, and their practice was from time to time to buy shares in the way of their business, and to obtain advances on them by equitable mortgage or otherwise for the purposes of their business, and for convenience the shares were generally taken in the name of B., who held them as trustee for the partnership. B. deposited the certificates together with a blank transfer of railway shares, bought with partnership moneys, and registered in his name, with a bank to secure moneys due to the bank from the firm. B. and T. became bankrupt, and no notice of the deposit was given to the railway company until after the commencement of the bankruptcy:—

*Held*, that as the shares were bought with partnership moneys, and intended to be used for the purposes of the partnership business, they were at the time of the bankruptcy in the order and disposition of B. in his business, for that the business of the partnership was B.'s business, although another person was associated with him in it; and further, that as no notice of the deposit had been given to the railway company, the shares were in the order and disposition of B., by the consent and permission of the true owner, under such circumstances that B. was the reputed owner of them:—

*Held*, therefore, that the shares must pass to the trustee in bankruptcy, unless they were taken out of the reputed ownership clause, *Bankruptcy Act, 1883, s. 44, sub-s. iii.*, by the proviso excluding choses in action from the operation of the clause.

*Held* by Cotton and Lindley, L.JJ., *dissentiente* Fry, L.J., that the shares were not choses in action within the meaning of the proviso, and that they passed to the trustee. *Order of Bacon, V.C.*, (51 L. T. 354, 32 W. R. 974, 1884 Dig. col. 43), affirmed. *COLONIAL BANK v. WHINNEY* [30 Ch. D. 261, 53 L. T. 272, 33 W. R. 852 (C.A.)]

3. — *Trade Custom—Hiring of Furniture—Hotel Keeper—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. 3.]* The custom for hotel-keepers to hire the furniture of their hotels is so notorious, and has been so often proved, that it need not now be proved, but the Court will take judicial notice of it. And the custom extends, not only to furniture in the strictest sense of the word, but to all the articles which are necessary for the furnishing of an hotel for the purpose of using it as an hotel.—The effect of the custom is absolutely to exclude the reputation of ownership by the hotel-keeper of all those articles in the hotel, at the time of his bankruptcy, which are within the scope of the custom, without regard to the question whether the particular articles are or are not in fact hired by him. Consequently, articles which are his property subject to a mortgage by bill of sale, will be excluded from the

**XV. BANKRUPTCY—ORDER AND DISPOSITION—continued.**

operation of the reputed ownership clause. *Ex parte TURQUAND. Re PARKER* (No. 3)

[14 Q. B. D. 636, 54 L. J. Q. B. 242,  
[53 L. T. 579, 33 W. R. 437 (C.A.)]

4. — *Wife's Separate Property in Possession of Husband—Marriage Settlement made in Foreign Country.* The rule that a husband is a trustee for his wife of her separate property when no other trustee has been appointed, applies to that which becomes her separate property by virtue of a marriage contract entered into in a foreign country.—When, therefore, such property is in the possession of a husband at the commencement of his bankruptcy it does not pass to his trustee.

*Ex parte SIBETH. Re SUSE AND SIBETH*

[14 Q. B. D. 417, 54 L. J. Q. B. 322, 33 W. R. 556  
(C.A.)]

**XVI. BANKRUPTCY—PETITION—Act of Bankruptcy—Failure to comply with Bankruptcy Notice to pay Judgment Debt—Appeal pending from Judgment staying Proceedings—Discretion of Registrar—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7, sub-s. 4.]** The Court of Appeal will not interfere with the exercise of discretion by the registrar, under sub-s. 4 of s. 7 of the Bankruptcy Act, 1883, in adjourning the hearing of, or dismissing, a bankruptcy petition founded on non-compliance with a bankruptcy notice in respect of a judgment debt, when an appeal is pending from the judgment, unless it is clear that the registrar could not have been right.—If the appeal appears to be a *bonâ fide* one, the hearing of the bankruptcy petition ought to be adjourned.—If the appeal is evidently frivolous, a receiving order ought to be made, notwithstanding its pendency. *Ex parte HEYWORTH. Re RHODES*

[14 Q. B. D. 49, 54 L. J. Q. B. 198, 52 L. T. 201  
(C.A.)]

2. — *Dismissal—Adjournment—"Sufficient Cause"—Prior Arrangement between Debtor and Creditors—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7 (3).]* The fact that a debtor has, shortly before the presentation of a bankruptcy petition against him, entered into an arrangement with his creditors (to which the petitioner has not assented) is not, however beneficial to the creditors the terms of the arrangement may be, a "sufficient cause" within the meaning of s. 7 (3) of the Bankruptcy Act, 1883, for dismissing the petition.—And, there being no jurisdiction under such circumstances to dismiss the petition, there is no jurisdiction to adjourn the hearing of it with a view to its ultimate dismissal in case the arrangement shall be found to work well.—The decision in *Ex parte DIXON* (13 Q. B. D. 118, 53 L. J. Ch. 769, 50 L. T. 414, 32 W. R. 837), did not depend upon the particular terms of the arrangement in that case, but on the fact that the arrangement was made at such a time and in such a manner as not to bind dissentient creditors.

*Ex parte ORAM. Re WATSON*

[15 Q. B. D. 399, 52 L. T. 785, 33 W. R. 890  
(C.A.)]

3. — *Notice to sheriff of—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) s. 46 (ii.).]* The notice to be served on a sheriff of a bankruptcy petition

**XVI. BANKRUPTCY—PETITION—continued.**

having been presented against or by the debtor under the above section, need not necessarily be in writing. *CURTIS v. WAINBROOK IRON CO.*

[1 C. & E. 351]

4. — *Right to present—Trustee for absolute Beneficial Owner—Joining Equitable Owner of Debt—Amendment of Petition—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 4, sub-s. 1 (g), 5, 6, 105 (sub-s. 3).]* Under the Bankruptcy Act, 1883, as under the Bankruptcy Act, 1869, a mere trustee of a debt for an absolute beneficial owner is not entitled to present a bankruptcy petition against the debtor unless the *cestui que trust*, if capable of dealing with the debt, joins as a co-petitioner.—*Ex parte CULLEY* (9 Ch. D. 307) followed.—When an act of bankruptcy has been committed by the failure of a debtor to comply with a bankruptcy summons, any creditor may avail himself of it for the purpose of presenting a bankruptcy petition against the debtor; the right to petition is not limited to the creditor who has served the bankruptcy notice.—A bankruptcy petition having been presented by a bare trustee of a debt, and dismissed on the ground that the *cestui que trust* ought to have been joined as a petitioner, leave was given by the Court of Appeal (though more than three months had elapsed since the presentation of the petition) to amend it by joining the *cestui que trust*, with her consent, but the appellant was ordered to pay costs of the appeal, and the costs (if any) occasioned by the amendment. *Ex parte DEARLE. Re HASTINGS* 14 Q. B. D. 184, 54 L. J. Q. B. 74, [33 W. R. 440 (C.A.)]

5. — *Signature—Petition by Creditor—Signature by Attorney—Bankruptcy Rules, 1883, r. 125—Appendix, Form No. 10.]* A bankruptcy petition by a creditor may be signed on his behalf by his duly constituted attorney.—A power of attorney authorized the attorney (*inter alia*) "to commence and carry on, or to defend, at law or in equity, all actions, suits, or other proceedings touching anything in which I or my ships or other personal estate may be in anywise concerned":—*Held*, that this power authorized the attorney to sign on behalf of his principal a bankruptcy petition against a debtor of the principal. *Ex parte WALLACE. Ex parte RICHARDS. Re WALLACE.*

[14 Q. B. D. 22, 54 L. J. Q. B. 293,  
[51 L. T. 551, 33 W. R. 66 (C.A.)]

— Money received by petitioner from debtor during pendency of—Title of trustee.

See **BANKRUPTCY—TRUSTEE.** 5.

— Notice to sheriff of—Sale under execution.

See **SHERIFF.** 4, 5.

— Presented in wrong Court.

See **BANKRUPTCY—RECEIVING ORDER.** 2.

**XVII. BANKRUPTCY—PROOF—Amended.]** Where after a composition payable at fixed dates has been agreed upon, a creditor sends in an amended proof for a larger sum, the trustee is entitled to a reasonable time from the sending in of such amended proof for payment of the amount due thereon. *BURGESS v. GILLESPIE*

[1 C. & E. 321]

2. — *"Debt or Liability"—Order of Divorce Court for Payment of monthly or weekly Alimony—29 & 30 Vict. c. 32, s. 1—Bankruptcy Act, 1883*

**XVII. BANKRUPTCY—PROOF—continued.**

(46 & 47 Vict. c. 52), s. 37—*Debtors Act*, 1869 (32 & 33 Vict. c. 62), s. 5.] Future weekly or monthly payments of alimony, payable by a husband by virtue of an order of the Divorce Court made under s. 1 of the Act 29 & 30 Vict. c. 32, are not capable of valuation, and are not a "debt or liability" within the meaning of s. 37 of the Bankruptcy Act, 1883. They cannot, therefore, be proved in the bankruptcy of the husband, and he is, notwithstanding his bankruptcy, liable to continue the payments. Arrears of payments of alimony, under such an order constitute a debt enforceable under s. 5 of the Debtors' Act, 1869. *Decision of Cave, J., affirmed. LINTON v. LINTON* [15 Q. B. D. 239, 54 L. J. Q. B. 529, 52 L. T. 782, [33 W. R. 714, 49 J. P. 597 (C.A.)]

3. — *Evidence—Admissibility—Admission by Dead Man against Interest—Bankrupt's Statement of Affairs—Judgment Debt—Inquiry into Consideration.*] In order that an admission made by a dead man may be admissible in evidence on the ground that it was against his interest, it must have been actually against his interest at the time when it was made; it is not sufficient that it might possibly turn out afterwards to have been against his interest.—An admission made by a bankrupt in his statement of affairs that a debt is due from him, is not after his death admissible evidence as against his assignee in bankruptcy of the existence of the debt, merely because it might turn out that there was a surplus after paying the creditors. Leave to appeal to H. L., from the decision of the C. A. (*sub nom. Ex parte Revell. Re Tollemache*, 13 Q. B. D. 720; 54 L. J. Q. B. 89; 51 L. T. 376; 33 W. R. 238; 1884 Dig., col. 44) refused. *Ex parte EDWARDS. Re TOLLEMACHE* - - - 14 Q. B. D. 415 (C.A.)

4. — *Joint and Separate estate—Trustee and Cestui que trust.*] J. by his will bequeathed certain sums to each of his children, and directed the trustees of his will to continue his business, and with the consent of his children to employ in the business any part of the general estate, paying interest for it. A bill in equity having been filed against the trustees by parties interested under the will, an arrangement was entered into, by which the sums to be paid to J.'s children under the will were fixed at a certain amount, and the times of payment fixed, the trustees undertaking to secure payment by mortgages of the testator's estate, and to make such assurances as the Court should think necessary or proper. The Court sanctioned this arrangement, and the Appellants, J.'s children, assented to it. The mortgages were not executed, nor was the money due to the Appellants paid. One of the trustees became possessed of the whole property, and carried on the business alone, and afterwards filed a liquidation petition.

An order was made in the Chancery suit, declaring that the Appellants were entitled to a lien on the property for the money due to them. The Appellants claimed to prove against the separate estate of the liquidating debtor:—

*Held*, reversing the decision of Cave, J. (52 L. T. 299; W. N. (1884) 244), that until the arrangement was carried out the trustees of the will remained trustees for the Appellants in respect of

**XVII. BANKRUPTCY—PROOF—continued.**

the money due to them, and therefore were severally as well as jointly liable, and were also severally liable because they had agreed to give mortgages, which, if properly drawn, would contain several covenants to pay, and therefore the Appellants were entitled to prove against the debtor's separate estate. *Ex parte CRAVEN. Ex parte KING. Re INGHAM* - 52 L. T. 714, [W. N. (1885) 21 (C.A.)]

5. — *Judgment Debt—Evidence.*] When in support of a claim to prove a debt in a bankruptcy the only evidence of the debt is a judgment, and that judgment has been obtained after the act of bankruptcy, the judgment debt cannot be proved. *Ex parte BONHAM. Re TOLLEMACHE* 14 Q. B. D. [604, 54 L. J. Q. B. 388, 52 L. T. 17, 33 W. R. [628 (C.A.)]

6. — *Judgment Debt—Proof of Consideration—Evidence of Judgment.*] When a claim is made to prove in a bankruptcy in respect of a judgment debt, though the judgment is *prima facie* evidence of the debt, it is not conclusive evidence, and, if the circumstances are suspicious, the Court will call upon the claimant to prove the consideration for the judgment, and if he is unable to prove it, by reason of the loss of documents, or the lapse of time or otherwise, the proof will be rejected.—A judgment may be proved by the production of a duly certified copy of an entry in the entry-book of judgments of the Court in which the judgment was recovered. *Ex parte ANDERSON. Re TOLLEMACHE* - 14 Q. B. D. 606, 54 L. J. Q. B. 383, [52 L. T. 786 (C.A.)]

7. — *Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 3—*Onus of Proof.*] Where a married woman lends or entrusts her money to her husband for the purpose of any trade, &c., carried on by him or otherwise, she cannot prove, for the purpose of voting only, or at all, until after the other creditors are satisfied. The *onus* of proof that the money was not lent for such purposes is on the wife. *Ex parte DISTRICT BANK OF LONDON. Re GENESE* - 34 W. R. 79

8. — *Partnership—Deceased Partner—Trust of Real Estate to pay Debts—No Real Estate—Debts Statute-barred—Bankruptcy of continuing Partners—Proof by executors of Deceased Partner—Rule against proving in Competition with one's own Creditors.*] A devise of real estate upon trust to pay debts does not prevent the operation of the Statute of Limitations when the testator leaves no real estate to support the trust.—A., B., and C. carried on business in co-partnership. In 1875, A. retired from the firm, his share being purchased by B. and C., the continuing partners. On his retirement, A., at the request of the continuing partners, paid certain mortgage debts of the business, and took transfers to himself of these mortgage debts with the securities for the same. He also at their request lent them money on mortgage of other portions of the partnership property. He died in 1876. B. and C. continued the business until 1883, when they became bankrupt. At this time there were cash creditors of the old firm still unpaid, who carried in proofs against the joint estate of B. and C. The executors of A. also carried in a proof against the separate

**XVII. BANKRUPTCY—PROOF—continued.**

estates of B. and C. for (1) the balance of the purchase-money of A.'s share; (2) the mortgage debts paid off by A. on transfer to himself; (3) the moneys lent by A. on mortgage after his retirement. This proof was rejected by the trustee on the ground that to admit it would infringe against the rule forbidding a partner to prove in competition with his own creditors:—*Held*, by Cave, J., that as the debts proved by the cash creditors were, as against A.'s estate, statute-barred, the rule did not apply, and that the proof must be admitted. *Ex parte SMITH. Re HEPBURN*

[14 Q. B. D. 394, 54 L. J. Q. B. 422

— By secured creditor.

*See* BANKRUPTCY—SECURED CREDITOR.

— Loan society — Bankruptcy of borrowing member.

*See* COMPANY — UNREGISTERED COMPANY. 2.

— Possibility of having to pay costs.

*See* EXECUTOR—ACTIONS. 1.

— Rejection of—Appeal—Notice of motion.

*See* BANKRUPTCY—APPEAL. 6.

**XVIII. BANKRUPTCY — PROTECTED TRANS-ACTION—**

*Notice of Act of Bankruptcy—Onus of Proof—Judgment recovered after act of Bankruptcy—Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), s. 165.]* When a creditor claims to prove in a bankruptcy in respect of a debt which came into existence after the commission of the act of bankruptcy on which the fiat was based (the bankruptcy being under the Bankruptcy Act, 1849), the onus is on him to prove that he had no notice of the act of bankruptcy before the creation of the debt.—*Ex parte Schulte* (Law Rep. 9 Ch. 409, 30 L. T. 478, 22 W. R. 462) followed. *Ex parte REVELL. Re TOLLEMACHE* (No. 2).

[13 Q. B. D. 727, 54 L. J. Q. B. 92, 51 L. T. [379, 33 W. R. 239 (C.A.)]

2. — *Shipbuilding Contract—Power for Buyer in the Event of Bankruptcy of Builder to use Materials belonging to Builder in completion of Ship.* A contract for the building of a ship provided that, if at any time the builder should cease working on the ship for fourteen days, or should allow the time for completion and delivery of the ship to expire for one month without the same having been completed and ready for delivery, or in the event of the bankruptcy or insolvency of the builder, it should be lawful then and thenceforth for the buyer to cause the ship to be completed by any person he might see fit to employ, or to contract with some other person for the completion of the work agreed to be done by the builder, and to employ such materials belonging to the builder as should be then on his premises, and which should either have been intended to be, or be considered fit and applicable for the purpose:—

*Held*, that, so far as this clause applied to the bankruptcy of the builder, it was void as against the trustee in his bankruptcy as being an attempt to control the user after bankruptcy of property vested in the bankrupt at the date of the bankruptcy, and as depriving the trustee of the right

**XVIII. BANKRUPTCY — PROTECTED TRANS-ACTION—continued.**

to elect whether he would complete the ship or not as might seem most advantageous for the creditors under the bankruptcy, and transferring that right of election to the buyer:

*Held*, also, that, this clause having been put in force by the buyer on the filing of a liquidation petition by the builder, the user of the builder's goods in the completion of the ship could not be justified on the ground of a subsequent cesser of work on the ship. *Ex parte BARTER. Ex parte BLACK. In re WALKER* - - 26 Ch. D. 510, [53 L. J. Ch. 802, 51 L. T. 811, 32 W. R. 809 (C.A.)]

**XIX. BANKRUPTCY—Default in**

*Payment of Instalment of Judgment Debt—Commitment Order—Arrest of Debtor—Payment under Protest—Title of Trustee to Money paid—Bankruptcy Act, 1883, ss. 9, 121—County Court Rules, 1884, rr. 1-4.]* After a commitment order had been issued by the Mayor's Court in London against a judgment debtor for default in payment of an instalment of the judgment debt, a receiving order was made against him under sect. 9 of the Bankruptcy Act, 1883:—*Held*, by Cave, J., that the commitment order was not a process for contempt of Court, but to enforce payment of a debt provable in the bankruptcy, and that after the making of the receiving order the debtor was privileged from arrest. *Ex parte STEWART, THE OFFICIAL RECEIVER. Re RYLEY* 15 Q. B. D. 329, [54 L. J. Q. B. 420, 33 W. R. 656

2. — *Receiving Order—Arrest of Debtor between Date and signing of Order—Bankruptcy Act, 1883, s. 9—Bankruptcy Rules, 1883, r. 153; Appendix, Forms 29 and 30.]* Having regard to the terms of sect. 9 of the Bankruptcy Act, 1883, as to the effect of a receiving order in protecting a debtor from arrest, the order must be deemed to have been "made" on the day it was pronounced, and therefore as protecting the debtor as from that day.

Therefore, where a debtor had been arrested under an order of the Chancery Division made after the date of a receiving order pronounced before, but not drawn up and signed by the Registrar (Bankruptcy Rules, 1883, r. 153, Appendix, Forms 29 and 30) until after the arrest, he was ordered to be discharged, notwithstanding that he had by his counsel submitted to the order of attachment.

Order of Kay, J., affirmed. *Re MANNING*

[30 Ch. D. 480, 34 W. R. 111 (C.A.)]

**XX. BANKRUPTCY — RECEIVING ORDER —**

*County Court—Judgment summons for Committal—Transfer to Bankruptcy Court—Notice to Judgment Debtor—Debtors Act, 1869, s. 5—Bankruptcy Act, 1883, s. 103, sub-s. 4 & 5—Bankruptcy Rules, 1885, r. 268 (1) (a).]* When a judgment summons for a committal comes before the judge of a county court, not having jurisdiction in bankruptcy, and he, being of opinion that a receiving order should be made in lieu of a committal, makes an order transferring the matter to the Bankruptcy Court, notice of the subsequent proceedings under the order of transfer must be served on the judgment debtor.—In such a case the Court of Bankruptcy is not bound to act on the opinion of the county court judge, and to make a receiving order as of

**XX. BANKRUPTCY—RECEIVING ORDER—**  
*continued.*

course, but must exercise its judicial discretion on hearing the case on its merits. *Ex parte ANDREWS. Re ANDREWS* 15 Q. B. D. 335, 54 L. J. Q. B. 573

2. — *Jurisdiction—Petition presented in wrong Court—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 93, 97.]* If a bankruptcy petition is by inadvertence presented in a wrong bankruptcy court, the court to which it is presented has jurisdiction to make a receiving order.—If, however, the petition is wilfully presented in a wrong court, this is a ground for dismissing it.—The Divisional Court made a receiving order, which it held that the county court ought to have made, and to which the debtor had raised no other objection than want of jurisdiction, giving leave to the debtor to apply afterwards to the Divisional Court to discharge the order on any ground arising since the hearing in the county court. *Ex parte MAY. Re BRIGHT-MORE* 14 Q. B. D. 37, 51 L. T. 710, 33 W. R. 598

3. — *Petition founded on judgment Debt—Power of Court to inquire into Consideration—Bankruptcy Act, 1883, s. 7 (iii.).]* The Court of Bankruptcy has power to go behind a judgment and to inquire into the consideration for the judgment debt, not only at the instance of the trustee in a bankruptcy upon a question of the proof of a debt, but also at the instance of the judgment debtor himself, upon a petition by the judgment creditor for a receiving order, and even though the debtor has consented to the judgment; and, if on the hearing of the petition facts are alleged by the debtor, of which evidence is tendered, and which, if proved, would show that, notwithstanding the judgment, there is, by reason of fraud or otherwise, no real debt, the Court ought not to make a receiving order without first inquiring into the truth of the debtor's allegations. *Ex parte Kibble* (L. R. 10 Ch. 373, 23 W. R. 433) discussed. *Ex parte LENNOX. Re LENNOX* 55 L. J. Q. B. 45, [34 W. R. 51, W. N. (1885) 189 (C.A.)]

— Effect of, in protecting debtor from arrest.

See BANKRUPTCY—PROTECTION.

— Petition for.

See BANKRUPTCY—PETITION.

**XXI. BANKRUPTCY—SECURED CREDITOR—**  
*Composition—Deposit of Goods—Bill given for Debt indorsed away—Composition paid to Indorsee without deducting Value of Security.]* The Plaintiff gave credit to the Defendants for goods sold, and made advances to them, goods being deposited by the Defendants with the Plaintiff as security, and bills being drawn by the Plaintiff and accepted by the Defendants for the amounts of the goods sold and advances made.—The Plaintiff indorsed away such bills for value. During the currency thereof the Defendants filed a petition for liquidation by way of arrangement or composition with their creditors under the Bankruptcy Act, 1869. The creditors of the Defendants passed resolutions for the acceptance of a composition. The holders of the bills, by arrangement between themselves and the Plaintiff, claimed and were paid the composition on the total amounts of the bills, the Plaintiff paying them the balance thereof. The Plaintiff having realized his security by sale of the goods deposited claimed to hold

**XXI. BANKRUPTCY—SECURED CREDITOR—**  
*continued.*

the proceeds against the balance so paid by him upon the bills:—*Held* (by Pollock, B., and Day, J.), that under the above circumstances the Plaintiff could not be considered to have abandoned or forfeited his right to the security, but that the Plaintiff was not entitled to stand in a better position than that which he would have occupied if he had not negotiated the bills, in which case he could only have received a composition on the balance of his debt after deducting the value of the security; and that consequently he was bound to account to the Defendants for the amount by which the composition paid on the bills exceeded that which would have been paid if the value of the security had been deducted before ascertaining the amount of the composition. *BAINES v. WRIGHT* - 15 Q. B. D. 103, 53 L. T. 395

(Affirmed by C.A., W. N. (1885) 210)

2. — *Valuation of Security—Amendment of Proof—Bankruptcy Act, 1883—Sched. 2, r. 13.]* A mortgagee who has valued his security will in a proper case be allowed, under r. 13 in Sched. 2 to the Act to amend his valuation and proof, notwithstanding the opposition of a subsequent mortgagee. *Ex parte ARDEN. Re ARDEN. ARDEN v. DEACON* 14 Q. B. D. 121, 51 L. T. 712, 33 W. R. [460]

**XXII. BANKRUPTCY—SMALL BANKRUPTCIES—Summary Administration—Application by Official Receiver for—Evidence—Bankruptcy Act, 1883, s. 121—Rule 237 (if.)] The official receiver having reported to a county court registrar sitting in bankruptcy that the bankrupt's property was not likely to exceed £300 in value, asked for an order for summary administration of the estate under the above section, but the registrar refused to make the order unless the official receiver would support his report by affidavit, assigning no other reason for refusal:—**

*Held*, by Cave and Wills, JJ., that the registrar was not entitled to require an affidavit in support of the official receiver's report, and that such reports were intended to be received by the Court as *prima facie* evidence, and to be acted upon as such.

*Semble*, the above section gives a certain discretion to the Court, and that a refusal must be based upon reasonable grounds. *Ex parte THE OFFICIAL RECEIVER. Re HORNIBLOW* - 53 L. T. 155

— Appeal—Leave.

See BANKRUPTCY—APPEAL. 7.

— Costs — Personal order against official receiver.

See BANKRUPTCY—COSTS. 4.

**XXIII. BANKRUPTCY—TRADER—Residential Estate—Farming and Market Gardening for Pleasure—Live and Dead Stock—Bill of Sale—Order and Disposition—"Trade or Business"—Bankruptcy Act, 1883, s. 44.] A person who occupies a residential property and engages in farming and market gardening for his pleasure, and carries on the same at a profit, is not carrying on a "trade or business" within the meaning of sect. 44 of the Bankruptcy Act, 1883, even although he sells his surplus produce after supplying his household.—But if the primary intention is aban-**

**XXIII. BANKRUPTCY—TRADER—continued.**

doned, and the business is carried on with a view to profit as a means of livelihood, he will come within the mischief of the section. So held, by Cave, J. *Ex parte SULLY*. Re WALLIS 14 Q. B. D. 950, 52 L. T. 625, 33 W. R. 733

**XXIV. BANKRUPTCY—TRUSTEE—Liquidation—Scheme of arrangement—Power of Board of Trade to require Accounts from Trustee—Bankruptcy Act, 1883, ss. 102, 162 (ii.)] Ex parte BOARD OF TRADE. Re HARVEY W. N. (1884) 245**

2. — Release and Discharge of Trustee—Power of Board of Trade to require Account—Bankruptcy Act, 1869, s. 126—Bankruptcy Act, 1883, s. 102, sub-s. 5, s. 162, sub-s. 2.] A trustee under the Bankruptcy Act, 1869, who has obtained his statutory release and discharge under that Act, after the 25th of August, 1883 (the date of the passing of the Bankruptcy Act, 1883), is not thereby relieved from rendering an account to the Board of Trade of his receipts and payments as such trustee if, on that date, he had in his hands any undistributed funds, although such funds may have been disposed of by a subsequent resolution of the creditors. So held, by Cave, J. *Ex parte BOARD OF TRADE*. Re CHUDLEY 14 Q. B. D. 402, 33

[W. R. 708

3. — Removal by Court—Jurisdiction—Discretion of Registrar—"Cause shewn"—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 83.] The power given to the Court by sub-sect. 4 of sect. 83 of the Bankruptcy Act, 1869, to "remove any trustee upon cause shewn," authorizes the removal of one of several co-trustees without the removal of all.—"Cause shewn" does not mean only conduct amounting to fraud or dishonesty on the part of the trustee; it is enough to prove conduct—such as vexatious obstruction of the realization of the estate in the interest of the debtor—which shews that it is no longer fit that the trustee should remain a trustee.—Though the making of an order to remove a trustee is not a matter of pure discretion, and the Court of Appeal is bound to see that cause was shewn in order to found the jurisdiction of the registrar, yet, if the facts are capable of two reasonable interpretations, the Court of Appeal will trust to the discretion of the registrar in determining which is the more reasonable interpretation of the two, and will not disturb his order for the removal of a trustee, he, from his acquaintance with the proceedings throughout, having far better means of judging than the Court of Appeal has. *Ex parte NEWITT*. Re MANSEL [14 Q. B. D. 177, 54 L. J. Q. B. 245, 52 L. T. 202,

[33 W. R. 142 (C.A.)]

4. — Title of—Bankruptcy Petition—Money paid by Debtor to his Solicitor to oppose Petition.] Money *bona fide* paid by a debtor to his solicitor to defray counsel's fees and other legal expenses in opposing proceedings in bankruptcy that have been commenced against him, cannot, should adjudication follow, be recovered from the solicitor by the trustee in bankruptcy, even although the solicitor knew of the acts of bankruptcy on which the proceedings were based. *Ex parte PAYNE*. Re SINCLAIR - - - 15 Q. B. D. 616

5. — Title of—Relation back—Bankruptcy Petition—Money received by petitioning Creditor's Solicitor from Debtor during pendency of Petition,

**XXIV. BANKRUPTCY—TRUSTEE—continued.**

and paid over to petitioning Creditor—Liability of Solicitor to refund to Trustee—Principal and Agent.] Pending the hearing of a bankruptcy petition, and with notice of the act of bankruptcy on which it was founded, the solicitor of the petitioning creditor, as his agent, received from the debtor various sums of money as consideration for successive adjournments of the hearing of the petition, and these sums he paid over, or accounted for, to his client (the petitioning creditor). Afterwards an adjudication was made on the petition:—Held, that, the solicitor having received the money with notice of the act of bankruptcy to which the title of the trustee related back, the payment by him was a wrongful act, and he was liable to repay the money to the trustee, and was not discharged by the payment to his own principal. *Ex parte EDWARDS*. Re CHAPMAN [13 Q. B. D. 747, 51 L. T. 881, 33 W. R. 268 (C.A.)]

6. — Title of—Relation back—Payment of Bankrupt's Money to procure Withdrawal of Criminal Prosecution—Illegal Consideration—Right of Trustee to recover from Payee.] A banking company commenced a prosecution against a customer for having obtained credit from them under false pretences, which is, by s. 13 of the Debtor's Act, 1869, made a misdemeanor. At this time the bank had notice of an act of bankruptcy committed by the customer. On the day on which the summons was to be heard by the magistrate, H. (whose wife was an aunt of the customer's wife) signed an undertaking that, if the magistrate would allow the summons to be withdrawn, he would pay the bank the sum which the customer had obtained from them by the false pretences. An application was made to the magistrate by the customer's solicitor to allow the summons to be withdrawn. The application was assented to by the bank's solicitor and was granted by the magistrate. H. then paid the money to the bank. The bank manager believed that H. was paying the money out of his own pocket. The customer was soon afterwards adjudicated a bankrupt, upon the act of bankruptcy of which the bank had notice. The trustee in the bankruptcy discovered that the money which H. had paid to the bank had been previously handed to him by the bankrupt's wife, she having, with the bankrupt's knowledge, taken it for the purpose of paying the bank out of a bag of money belonging to the bankrupt:—Held, by Stephen and Cave, JJ., that, the consideration for the payment to the bank being the stifling of a prosecution, there was no legal consideration, and that, though H., being *in pari delicto*, could not have recovered the money from the bank, the trustee, to whom by virtue of the relation back of his title to the act of bankruptcy, the money really belonged, could recover it.—*Ex parte Caldecott* (4 Ch. D. 150) distinguished.—Leave to appeal to the Court of Appeal refused. *Ex parte WOLVERHAMPTON AND STAFFORDSHIRE BANKING COMPANY*. Re CAMPBELL - 14 Q. B. D. 32, 33 W. R. 642

7. — Title of—Relation back—Assignment of Debt—Ship—Building Contract—Completion by Trustee.] A shipbuilder agreed to build a vessel, the price to be paid in specified instalments. Part of the work having been done, but

**XXIV. BANKRUPTCY—TRUSTEE—continued.**

less than the value of such part having been paid to the builder, he charged in favour of a creditor the instalment due to him on the delivery of the vessel. Before the ship was completed he became bankrupt. The trustee in the bankruptcy completed the vessel, and in so doing expended less than the amount which remained to be paid by the purchaser:—*Held*, that the charge, being upon money which had been already earned by the builder, was valid as against the trustee.—*Ex parte Nichols* (22 Ch. D. 782) and *Tooth v. Hallett* (Law Rep. 4 Ch. 242) distinguished. *Ex parte Moss*. *Ex parte Hawkes*. *Re Toward*

[14 Q. B. D. 310, 54 L. J. Q. B. 128, 53 L. T.

[188 (C.A.)

8. — *Title of—Relation back.*] The title of a trustee in bankruptcy to the bankrupt's property relates back under s. 11 of the Bankruptcy Act, 1869, to the original act of bankruptcy, although composition proceedings were taken in the first instance which were afterwards superseded by bankruptcy. When such a supersession takes place the title of the trustee in bankruptcy is prior to that of a creditor, who has seized and sold the debtor's goods with notice of the original act of bankruptcy. *BARRON v. EHLERS, SEEL & Co.*

[1 C. & E. 432

— *Action—Adoption by trustee of bankrupt's defence.*

*See PRACTICE—PARTIES.* 5.

— *Action by, in official name—Insolvency—Security for costs.*

*See PRACTICE—COSTS.* 18, 19.

— *Composition proceedings—Default by trustee.*

*See BANKRUPTCY—COMPOSITION.* 7.

— *Costs—Appearing on appeal.*

*See BANKRUPTCY—APPEAL.* 3.

— *Creditors' deed—Trustee under—Liability to account to trustee in bankruptcy.*

*See CREDITORS' DEED.* 1.

— *Disclaimer by.*

*See BANKRUPTCY—DISCLAIMER.*

— *Exercise of power of appointment by.*

*See BANKRUPTCY—ASSETS.* 1.

— *Official receiver acting as—Powers of—Sale.*

*See BANKRUPTCY—OFFICIAL RECEIVER.* 2.

**BANKRUPTCY—Appellant—Appeal to House of Lords.**

*See PRACTICE—APPEAL.* 1.

— *Bill of sale—Provision as to grantor's bankruptcy.*

*See BILL OF SALE—FORMALITIES.* 6.

— *Creditor's deed.*

*See CREDITORS' DEED.*

— *Forfeiture on—Settlement.*

*See SETTLEMENT—FORFEITURE CLAUSE.*

— *Maliciously procuring adjudication—Action for.*

*See CHAMPERTY.*

— *Voluntary settlement—Bankruptcy Act, 1883, s. 47.*

*See VOLUNTARY CONVEYANCE.* 2, 3.

**BANKRUPTCY NOTICE.**

*See BANKRUPTCY—ACT OF BANKRUPTCY.*

1, 2.

**BANKRUPTCY RULES.**

*See List of Rules at beginning of Digest.*

**BAPTISMAL REGISTER—Entry of date of birth—Evidence.**

*See EVIDENCE.* 3.

**BARRISTER—Appeal—Third counsel—Costs—Taxation.**

*See SOLICITOR—BILL OF COSTS.* 23.

— *Fees—Refreshers.*

*See PRACTICE—COSTS.* 3, 4, 24.

— *Opinion—Privilege.*

*See PRACTICE—DISCOVERY—DOCUMENTS.* 8.

— *Quebec—Remuneration—Right to recover fees.*

*See COLONIAL LAW.* 2.

— *Revising.*

*See PARLIAMENT.* 2, 5—8.

**BASTARDY—Summons—Service in Scotland—Jurisdiction of Justices where Putative Father resident in Scotland—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65)—Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24), ss. 4, 6.] The Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24) does not enable a bastardy summons to be issued by justices in England and served in Scotland upon the putative father domiciled and resident in Scotland; and if a summons is so served and the putative father does not appear before the justices they have no jurisdiction to make a bastardy order against him.**

So *held*, affirming the decision of the Court of Appeal (12 Q. B. D. 261, 53 L. J. M. C. 65, 50 L. T. 397, 32 W. R. 398, 48 J. P. 324, 1884 Dig. Col. 53). *BERKLEY v. THOMPSON* 10 App. Cas. 45,

[54 L. J. M. C. 57, 52 L. T. 1, 33 W. R. 525, [49 J. P. 276 (H.L., E.)

2. — *Time—Right to Order more than twelve months after Birth of Child—35 & 36 Vict. c. 65, s. 3—36 Vict. c. 9, s. 5.] Payment by putative father of a bastard, of money, in pursuance of an order obtained under 36 Vict. c. 9, s. 5, by the guardians of the union in which the mother becomes chargeable, is not such a payment under 35 & 36 Vict. c. 65, s. 3, as entitles the mother to make an application on her own behalf for an order against the father more than twelve months after the birth of the child.*

On the 3rd of August, 1883, the Respondent, an inmate of the S. workhouse, gave birth to a bastard child. On the 26th of July, 1884, while she was still an inmate of the S. workhouse with her child, the guardians of the parish applied for a bastardy summons against the Appellant as the putative father of the child, and on the 11th of August, 1884, an order was made against the Appellant adjudging him to pay a weekly sum towards the relief of the child. On the 1st of September, 1884, the Appellant paid two several sums to the guardians under the said order, but made no other payments, either to the guardians or the Respondent. Subsequently the Respondent discharged herself and her child from the workhouse, so that the child became no longer chargeable to the parish. On the 8th of December, 1884, she applied for a bastardy summons against the Appellant, at the hearing of which the Appellant appeared, and

**BASTARDY—continued.**

contended that the order could not be made as the Respondent was too late in her application. The magistrate, however, held that the order obtained by the guardians was practically an order obtained by the mother, and made the order in her favour.

*Held*, that the magistrate had no jurisdiction to make the order, as the order obtained by the guardians could not be treated as though obtained by the mother, whose application on her own behalf was not made until more than twelve months after the birth of the child, and was consequently out of time. *BILLINGTON v. CYPLES*

[52 L. T. 854, 49 J. P. 582]

3. — *Witness—Voluntary Attendance—Refusal to give Evidence—Power of Justices to commit*—7 & 8 Vict. c. 101, s. 70—*Bastardy Laws Amendment Act*, 1872 (35 & 36 Vict. c. 65), s. 4.] By 7 & 8 Vict. c. 101, s. 70, justices may at the request of any party to bastardy proceedings before them summon any person to appear and give evidence upon the matter of such proceedings, and if the person summoned neglect or refuse to appear, the justice by warrant may require such person to be brought before him or any justices before whom such proceedings are to be had, "and if any person coming or brought before any such justice in any such proceedings refuse to give evidence thereon," the justices may commit such person to the house of correction:—*Held* (by Grove and Hawkins, JJ., Smith, J., dissenting), that the power to commit extended to any witness, and was not confined to witnesses who appeared in answer to a summons or warrant. *REG. v. FLAVELL AND ANOTHER, LEAMINGTON, JJ.* - 14 Q. B. D. 364, [52 L. T. 133, 33 W. R. 343, 15 Cox, C. C. 680, 49 J. P. 406]

**BEER HOUSE.**

*See INN.*

**BENEFICE.**

*See ECCLESIASTICAL LAW.*

— *Advowson.*

*See ADVOWSON.*

**BETTING.**

*See GAMING.*

**BILL OF COSTS.**

*See SOLICITOR—BILL OF COSTS.*

**BILL OF EXCHANGE (and PROMISSORY NOTE)**

—*Acceptance in Blank—Right to fill up Drawer's Name after Death of Acceptor—Principal and Surety—Discharge of Surety—Laches of Creditor.*]

A bill of exchange accepted for valuable consideration, with the drawer's name left blank, may be completed by the drawer's name being added after the death of the acceptor.

A debtor gave his creditor a bill of exchange accepted by himself, but with the drawer's name left blank. The Plaintiff at the same time, as a surety, deposited with the creditor certificates of stock in a joint stock company as collateral security for the debt.

The debtor died without the creditor having filled in the name of the drawer, and his estate was insolvent.

The bill was never presented for payment, nor was notice given to the Plaintiff of its non-payment:—*Held*, that the creditor had not discharged the Plaintiff from his suretyship by his omission to fill up the drawer's name and to give notice of

**BILL OF EXCHANGE (and PROMISSORY NOTE)**  
—continued.

the non-payment of the bill to the Plaintiff. *CARTER v. WHITE* - 25 Ch. D. 666, 54 L. J. Ch. 138, [50 L. T. 670, 32 W. R. 692 (C.A.)]

2. — *Conflict of Law—Foreign Indorsement.*] Bills of exchange were drawn in France by a domiciled Frenchman in the French language, in English form, on an English company, who duly accepted them. The drawer indorsed the bills and sent them to an Englishman in England:—

*Held*, by Pearson, J., that the acceptor could not dispute the negotiability of the bills by reason of the indorsements being invalid according to French law. *Re MARSEILLES EXTENSION RAILWAY AND LAND CO. SMALLPAGE'S AND BRANDON'S CASES* - - - - 30 Ch. D. 598

3. — *Consideration—Promissory note in consideration of future services—Hulse v. Hulse* (17 C. B. 711) disapproved of. *MILLER v. MCKENZIE* - - - - 47 Amer. R. 85 (U.S.)

4. — *Securities for—Appropriation—Acceptances for Accommodation of Drawer—Remittances to cover Acceptances—Insolvency of Acceptor—Specific Appropriation—Interest credited by Acceptor to Drawer.*] A banker in London was in the habit of accepting for the accommodation of a customer, a merchant in Sweden, bills drawn on him by the merchant, who used to remit other bills to the banker to put him in funds to meet the acceptances when they became due. The banker, with the knowledge of the customer, generally discounted the remitted bills before they fell due, and paid the proceeds to his current account with his own bankers. He rendered yearly accounts to the customer, and in those accounts he credited him with interest on the amounts of the remitted bills from their due dates, and debited him with interest on the amounts which he paid in discharge of the acceptances. The amounts of the bills remitted by the customer did not always exactly correspond with the amounts of the acceptances which they were intended to cover. In April, 1883, the banker accepted a bill for £450 drawn on him by the customer, and maturing on the 21st of July. On the 13th of July the customer sent to the banker a bill for £450 upon W., of London, payable at sight. This bill was received by the banker on the 17th of July, and the proceeds were paid to his bankers and carried to his current account. On the 20th of July the banker stopped payment. His acceptance for £450 was dishonoured the next day, and the customer had to pay it. In November, 1883, the banker filed a liquidation petition:—

*Held*, that the remitted bill for £450 was not specifically appropriated to meet the banker's acceptance for £450, and that, as the amount of the bill had been received by the banker before the commencement of the liquidation, the customer was not entitled to the proceeds in specie, but could only prove for the amount as a debt in the liquidation.

*Seemle*, that, if the remitted bill had remained in specie at the commencement of the liquidation, the customer would, on retiring the acceptance, have been entitled to have the bill returned to



**BILL OF EXCHANGE (and PROMISSORY NOTE)**  
—continued.

him.—*Re Gothenburg Commercial Co.* (41 L. T. 166, 29 W. R. 358) approved and followed. *Ex parte NECK.* *Re BROAD* — 13 Q. B. D. 740, [54 L. J. Q. B. 79, 51 L. T. 388, 32 W. R. 912 (C.A.)]

5. — *Securities for—Appropriation of Consignments—Bill of Exchange drawn against Goods—Insolvency of Acceptor—Rights of Bill-holder and Drawer—Interest credited by Acceptor to Drawer.*] Bankers in London, at the request of M., who was acting as the agent in London of S., a merchant at Shanghai, on the 16th of March, 1883, granted to S. a letter of credit for £20,000. The letter authorized S. "to draw on us four months' sight for any sums not exceeding £20,000, such draft or drafts to be accompanied by bills of lading and invoices of tea, purchased according to order of M., and shipped by steamers to London, and marine insurance policies relating thereto, and these documents to be surrendered to us against our acceptances. And we hereby agree with you, and also as a separate engagement with the *bond fide* holders respectively of the bills drawn in compliance with the terms of this credit, that the same shall be duly accepted on presentation and paid at maturity, if drawn and negotiated on or before the 31st of December, 1883." It was agreed that a commission of 1 per cent. should be paid to the bankers on all drafts drawn under the credit, and M. agreed that he would meet all the acceptances on or before their due dates, "the usual rate of 2½ per cent. being allowed on all prepayments." Bills were drawn by S. under this credit against various parcels of tea consigned by him to M. for sale. In each case the bill mentioned the parcel of tea against which it was drawn, and purported to be drawn under the letter of credit, the date of which was mentioned, and the bills of lading and other shipping documents were in each case attached to the bill. S., in each case, advised the bankers of the drawing of the bill, mentioning the tea against which it was drawn and the name of the vessel by which it was shipped. S. discounted the bills with a Chinese bank, and their agent in London presented the bills for acceptance, and in exchange for the acceptance delivered the bills of lading and other documents attached to the London bankers, in whose name the tea was then warehoused with a dock company. As M. from time to time required portions of the tea for delivery to purchasers, the bankers handed to him warrants or delivery orders, he paying them the value of the tea comprised therein. The moneys thus received were paid to the credit of the general current account of the bankers with their own bankers. In an account in their books with M., they debited him with the amounts of the acceptances and credited him with the amounts received by the sales and with 2½ per cent. according to the agreement.—The London bankers suspended payment and filed a liquidation petition before their acceptances matured:—*Held*, that, having regard to the terms of the letter of credit, the bill-holders could not claim any specific appropriation of the teas to meet the acceptances:—But, *held*, that S. was entitled to have the teas which remained in specie at the

**BILL OF EXCHANGE (and PROMISSORY NOTE)**  
—continued.

date of the suspension (but not the proceeds of the sale of the teas which were sold before the suspension), applied in payment of the acceptances.—*Frith v. Forbes* (4 D. F. & J. 409, 7 L. T. 261, 11 W. R. 4) distinguished. *Ex parte DEVER* (or DEVERS). *Re SUSE* (No. 1) 13 Q. B. D. 766, [51 L. T. 437, 33 W. R. 290 (C.A.)]

6. — *Securities for—Appropriation—Marginal Advice—Stoppage in transitu—Notice to Consignees to hold Proceeds of Goods.*] A firm at Liverpool and a firm at Pernambuco employed B. as their agent at New York. According to their course of business the firm at Pernambuco received orders from persons there to purchase goods at New York. The firm instructed the Liverpool firm, who instructed B. B. then purchased the goods in New York and shipped them to the firm at Pernambuco with the bills of lading. B. drew bills on the Liverpool firm to pay for the goods, but not for the precise amount of the shipments, and sold the bills in New York. B. advised the Liverpool firm of the bills, and with the advice forwarded a statement of his account with them. To each bill was attached a counterfoil headed "Advice of draft," and containing a memorandum of amount of the bill and the name of the drawer, with the words "Against shipments per (naming the vessel). Please protect the draft as advised above." The Liverpool firm on the bills being presented to them for acceptance detached the counterfoils and kept them in their own possession. The Plaintiffs were the holders for value of bills drawn on the Liverpool firm in accordance with this course of dealing, the goods having been shipped by B. to the Pernambuco firm and the bills of lading being also sent to that firm.

On the 10th of June, 1879, the Liverpool firm stopped payment, and on the same day B. telegraphed to the Pernambuco firm as follows: "Having pledged documents and shipments (naming the vessel) hold proceeds for P. & Co. (the Plaintiffs)." The ship arrived on the 11th of June, but the bills of lading had been previously delivered to the purchasers of the goods.

The three bills having been dishonoured by the Liverpool firm, the Plaintiffs brought an action against the Pernambuco firm claiming to have the bills paid out of the proceeds of the goods as having been specifically appropriated to meet the bills, and also relying on the telegram as having stopped the goods *in transitu*:—

*Held* (affirming the decision of Bacon, V.C.) (26 Ch. D. 755, 53 L. J. Ch. 1134, 51 L. T. 16, 5 Asp. M. C. 245, 1884 Dig. Col. 56), that there was no specific appropriation of the goods either by the course of dealing or by the "advice of draft" attached to the bills. *Frith v. Forbes* (4 D. F. & J. 409, 7 L. T. 261, 11 W. R. 4) distinguished.

*Robey & Co.'s Perseverance Ironworks v. Ollier* (Law Rep. 7 Ch. 695) approved.

*Held*, also, that the telegram to the Pernambuco firm was not effectual to stop the goods *in transitu*.

*Quære*, whether under any circumstances a notice to stop goods *in transitu* can be effectual, if addressed to the consignees only, and not to

**BILL OF EXCHANGE (and PROMISSORY NOTE)**  
—continued.

the owner or master of the ship which carries them. *PHELPS, STOKES & Co. v. COMBER*

[29 Ch. D. 813, 54 L. J. Ch. 1017, 52 L. T. 873,  
[33 W. R. 829 (C.A.)]

7. — *Securities for—Appropriation—Equitable Assignment—Direction on Bill to charge it to Account of Cargo as advised—Contemporaneous Letter of Advice.*] A. purchased from B. & Co. in America a bill of exchange dated the 5th of August, 1875, payable sixty days after sight, for £2500 drawn upon K. in London, on the face of which was a direction "to charge the same on account of cheese per *Britannic* and lard per *Greece* as advised," and on the same day B. & Co. wrote to K. a letter of advice, inclosing bills of lading for the cheese and lard, and informing K., that as against these they valued on him at sixty days' sight for £2500 favour A. The bill was not accepted, K. having heard that B. & Co. had suspended payment on the 7th of August; but, on the arrival of the consignments in England, K. took possession of them and realized them, receiving the proceeds, out of which he claimed to retain a balance due to him on the general account between him and B. & Co.

From the evidence as to the course of dealing between A. and B. & Co. it appeared that B. & Co. had for many years previously been in the habit of consigning American produce to K., and drawing bills on him in a similar form to that of the 5th of August, but that there had not been any practice of specifically appropriating the remittances to meet any particular bills.

A. brought an action against K. and the trustee in bankruptcy of B. & Co. claiming to be entitled to a charge on the proceeds of the cheese and lard in priority to all other persons. No question was raised as between K. and the trustee in bankruptcy as to their respective rights:—

*Held*, by the Court of Appeal (affirming the decision of Chitty, J.), that A. was not entitled to the charge claimed, either (1) on the ground that the direction on the face of the bill of exchange operated as an equitable assignment; or (2) that on the authority of *Frith v. Forbes* (4 D. F. & J. 409), the letter of advice created a specific appropriation of the remittances to meet the bill in favour of B. & Co., the benefit of which was transferred to A. by the direction on the bill of exchange.

The case of *Frith v. Forbes*, if and in so far as it is intended to lay down that, as a general principle of law, such a letter of advice created a specific appropriation in favour of the consignors and drawers of the bill, the benefit of which was transferred by the direction on the bill to the bill-holders—is erroneous, and must not be followed. *BROWN, SHIPLEY, & Co. v. KOUGH*

[29 Ch. D. 848, 54 L. J. Ch. 1024, 52 L. T. 878,  
[34 W. R. 2 (C.A.)]

8. — *Securities for—Specific Appropriation of Remittances—Judicial Insolvency of Drawer and Acceptor—Application of Remittances remaining in Specie—Rule in Ex parte Waring.*] Bankers in London granted to merchants in Ceylon a letter of credit, authorizing the merchants to draw on them at three, four, or six months'

**BILL OF EXCHANGE (and PROMISSORY NOTE)**  
—continued.

sight, for any sums not exceeding £10,000 at one time, the drafts to be covered within two, three, or five months (according as they had been issued at three, four, or six months), by remittances on good London houses. And the bankers thereby agreed with the merchants, and also, as a separate engagement, with the *bonâ fide* holders respectively of the bills, that the bills should be duly accepted on presentation, and paid at maturity. The course of dealing between the parties was this—if the remittances sent as cover for the merchant's drafts matured later than the drafts accepted, interest was debited by the bankers against the merchants from the date of the maturity of the acceptances to that of the maturity of the remittances, while, if the remittances matured earlier than the acceptances, interest was credited to the merchants. In all cases the bankers dealt with the remittances as they thought expedient, and the proceeds were paid into the general banking account of their firm. Under this letter of credit a number of bills were drawn by the merchants on the bankers, and were accepted by them, and other bills were remitted by the merchants to cover the acceptances, the letters which accompanied the remittances always describing them as sent to cover particular drafts which were specified in the letters. The bankers stopped payment and filed a liquidation petition, under which a trustee was afterwards appointed. In consequence of their stoppage the merchants also stopped payment. At the date of the liquidation petition acceptances under the letter of credit to the amount of £11,535 were outstanding, to meet which the bankers had received from the merchants remittances to the amount of £3009, of which two bills remained in specie in the hands of the bankers, the others having been converted by them into cash. After the filing of the petition two other bills, which had been posted by the merchants before they knew of the stoppage of the bankers, came into the hands of the receiver appointed under the petition. The merchants' firm consisted of two partners, one of whom was insane, and resident in Germany. The same partner procured an adjudication of insolvency against himself in Ceylon, and under this insolvency an assignee was appointed. The same partner deposed that "under this insolvency my estate, and also the estate of my firm, so far as legally can be, is now being administered," and this evidence was not contradicted:—*Held*, that the joint estate of the merchants, as well as that of the bankers, was under a forced administration, and that consequently the rule in *Ex parte Waring* (19 Ves. 345, 2 Rose, 182) applied.—*Held*, therefore, that the proceeds of the four remitted bills which were in specie at the commencement of the liquidation must be applied, not in paying the whole of the acceptances rateably, nor in paying rateably all those acceptances to meet which remittances had been sent before the filing of the liquidation petition, but in paying those acceptances to meet which the four bills had been appropriated by the letters with which they were sent.—When remittances are sent under such circumstances to cover drafts of the remitter accepted by the remitee, the remitee may, so long as he is

**BILL OF EXCHANGE (and PROMISSORY NOTE)**—*continued.*

solvent, he entitled, by mercantile usage or the course of dealing between the parties, to deal with the remittances as he pleases; but, so soon as he becomes insolvent, the remitter is entitled to insist on having the remittances applied in paying the acceptances, and that right is the foundation of the rule in *Ex parte Waring* (19 Ves. 345, 2 Rose, 182), but the right extends only to those remittances which remain in specie at the date of the insolvency. *Ex parte DEVER. In re SUSE.* (No. 2.) - 14 Q. B. D. 611, 54 L. J. Q. B. 390, [53 L. T. 131, 33 W. R. 625 (C.A.)]

— Acceptance and payment of, by creditors after notice of debtor's bankruptcy.

See **BANKRUPTCY—MUTUAL DEALINGS.**

— Agreement in form of Promissory Note—Stamp.

See **REVENUE. 9.**

— Cheque.

See **BANKER. 2, 3.**

**BILL OF LADING.**

See **SHIP—BILL OF LADING.**

**BILL OF SALE:—**

I. FORMALITIES.

II. OPERATION.

III. POSSESSION.

IV. REGISTRATION.

**I. BILL OF SALE—FORMALITIES—Description of Grantor—Two distinct Trades carried on on same Premises—Only one described—**41 Vict. c. 31, s. 10.] The omission of a part of the description of the grantor of a bill of sale, which was neither intended nor calculated to deceive, and did not in fact deceive, will not, if the rest of the description is correct, invalidate the bill of sale.

The onus of proof of the omission being intended or calculated to deceive is upon the person who impugns the validity of the bill of sale on such ground. *THROSSSELL v. MARSH* - 53 L. T. 321

**2. — Form—Chattels afterwards brought upon Premises—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 4, 9.]** A bill of sale to secure an advance of money is void as not being in accordance with the form in the schedule to the above Act, if it contains a clause purporting to assign by way of security property which during the continuance of the security may be brought upon the premises in addition to or in substitution for that specifically assigned by it. *LEVY v. POLACK* [52 L. T. 551, W. N. (1885) 76]

The above case was overruled by the Court of Appeal in *CROSSER v. MAXWELL* W. N. (1885) 95 [(C.A.)]

**3. — Form—Interest—Lump Sum for—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9, Sched.]** A bill of sale, given by way of security for £30 advanced and £5 interest thereon, provided that the grantor should pay the principal sum, together with the interest then due, by five equal monthly payments of £7 each. There was a power to seize and sell the goods (*inter alia*) on default in payment of the sum secured at the time provided for payment.

*Held*, by Coleridge, C.J., and Mathew, J., that the interest was properly stated in accordance with the form in the schedule to the Bills of Sale

**I. BILL OF SALE—FORMALITIES—continued.**

Act, 1882, and that the bill of sale was valid. *THORP v. CREGEEN* 55 L. J. Q. B. 80, 33 W. R. 844

**4. — Form—Stipulated Time for Payment—Seven Days after Demand—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 7, 9, and Schedule.]** A bill of sale was given by way of indemnity to the grantee on his becoming security for the payment by the grantor of a sum of money, being an instalment of a composition due by him to his creditors. The grantor agreed that he would pay the said sum of money to his creditors on a given day, and the bill of sale provided that if he did not pay the money on the day named, and the grantee should be obliged to pay the same, the grantor would repay to the grantee the amount within seven days after demand in writing, with power in default to the grantee to seize and sell the goods:—*Held*, on the authority of *Hetherington v. Groome* (13 Q. B. D. 789, 53 L. J. Q. B. 576, 51 L. T. 412, 33 W. R. 103) that the bill of sale did not contain an agreement to pay the money secured at a stipulated time in accordance with the form given in the schedule of the Bills of Sale Act (1878) Amendment Act, 1882, and was therefore void. *SIBLEY v. HIGGS* 15 Q. B. D. [619, 54 L. J. Q. B. 525, 33 W. R. 748]

**5. — Form—Time for Payment—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9.]** A bill of sale given by way of security for payment of money contained an agreement by the grantor to pay principal and interest up to demand within twenty-four hours after demand in writing:—*Held*, that the bill of sale was void under the above section, as not being in accordance with the prescribed form, the agreement to pay twenty-four hours after demand not being an agreement to pay within a stipulated time. *CLEMONSON v. TOWNSEND* - - - 1 C. & E. 418

**6. — Statement of Consideration—Bankruptcy—Power to seize—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 8—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 7, 9.]** On the 12th of February a bill of sale was executed to secure an actual advance in cash of £1500. After its execution it was discovered that it contained some clauses which made it void under the Bills of Sale Acts. It was thereupon cancelled, and a new bill of sale was, on the 16th of February, executed in substitution for the first, and was registered on the 18th of February. The second deed contained nothing to shew that it was given in place of a prior bill of sale, but it purported to be given "in consideration of £1500 now paid" by the grantee to the grantor:—*Held* (by Stephen and Cave, JJ.), that the consideration was truly stated, and that it was not necessary to state the whole history of the transaction.

The deed empowered the grantee to seize the property in case (*inter alia*) the grantor "shall do or suffer any matter or thing whereby he shall become a bankrupt":—*Held*, that this event was in substance equivalent to the event "if the grantor shall become a bankrupt" in which, by sect. 7 of the Bills of Sale Act, 1882, a grantee is permitted to seize under a bill of sale, and that consequently the bill of sale was not void under sect. 9. *Ex parte ALLAM. Re MUNDAY*

[14 Q. B. D. 43, 33 W. R. 231]

**II. BILL OF SALE—OPERATION—After-acquired Property—Prior Equitable Estate—Subsequent Legal Estate without Notice—Supreme Court of Judicature Acts, 1873, 1875 (36 & 37 Vict. c. 66; 38 & 39 Vict. c. 77.)** The Supreme Court of Judicature Acts, 1873, 1875, have not abolished the distinction between legal and equitable interests, they merely enable the High Court to administer legal and equitable remedies; and therefore notwithstanding these statutes, the grant of future-acquired chattels confers only an equitable interest therein upon the grantee: and if when they come into existence, but before the grantee takes possession thereof, the legal estate and interest therein, without notice of the grantee's existing equitable interest, becomes vested in another person, the latter is entitled to the future-acquired chattels comprised in the grant, and becomes the owner thereof, both at law and in equity. By a bill of sale a jeweller, for a valuable consideration, assigned to the Plaintiff his after-acquired stock-in-trade subject to a proviso for redemption: before the Plaintiff took possession of the after-acquired stock-in-trade, the jeweller pledged a portion of it with the Defendant, who had no notice of the Plaintiff's bill of sale:—*Held*, that the Defendant was entitled to retain the stock-in-trade pledged with him as against the Plaintiff, and that no action of detinue or conversion would lie. *JOSEPH v. LYONS* - 15 Q. B. D. 280, 54 L. J. Q. B. 1, [51 L. T. 740, 33 W. R. 145, 1 C. & E. 262 (C.A.)]

2. — *After-acquired Property—Subsequent Bill of Sale—Grant of Legal Interest—Seizure by Owner of Equitable Interest.* By a bill of sale executed in 1875, R. granted to M. the after-acquired chattels which should be upon certain premises of R. The title of M. under the bill of sale ultimately vested in the Defendant. R. brought upon the premises chattels acquired by him after 1875, and, before the coming into operation of the Bills of Sale Act, 1882, by a bill of sale granted to the Plaintiff these after-acquired chattels. The Plaintiff had no notice of the bill of sale in favour of M. In January, 1884, the Defendant seized the after-acquired chattels then upon the premises of R. The Plaintiff demanded possession of them from the Defendant, who refused to give them up; and the Plaintiff thereupon brought an action to recover their value:—*Held*, that the Plaintiff was entitled to recover from the Defendant the value of the goods in question; for the grant of the after-acquired chattels to M. carried only an equitable interest, while the Plaintiff by the grant to him took the legal interest without notice of the prior equitable interest vested in M. and had a better title than the Defendant.—*Joseph v. Lyons (supra)* followed. *HALLAS v. ROBINSON* - 15 Q. B. D. 288, [54 L. J. Q. B. 364, 33 W. R. 426]

**III. BILL OF SALE—POSSESSION—Registration not renewed—Apparent Possession—Bills of Sale Acts, 1854 (17 & 18 Vict. c. 36), ss. 1, 7—1866 (29 & 30 Vict. c. 96), s. 5—1878 (41 & 42 Vict. c. 31), s. 8—1882 (45 & 46 Vict. c. 43), s. 3.]** In 1873 S. executed a bill of sale of furniture to the Respondents to secure a loan, with an absolute unconditional power to take possession and sell in case of default of payment upon demand. The bill was duly registered, but never re-registered. In 1883

**III. BILL OF SALE—POSSESSION—continued.**

the Respondents, in order to protect the furniture from S.'s creditors, demanded payment and on default took possession of the furniture and sold it to C., giving him a receipt for the purchase-money though no money actually passed. At the same time C. not being able to pay, executed a bill of sale of the furniture to the Respondents to secure the purchase-money. This bill was duly registered; the receipt was not registered. The transaction with C. was found by the jury to be a *bond fide* one. The furniture having been afterwards seized under a *fi. fa.* against S.:—

*Held*, affirming the decision of the Court of Appeal (49 L. T. 736), that the sale to C. being an absolute and *bond fide* transfer of the property the bill of 1873 was spent and satisfied, and the Bills of Sale Acts of 1854, 1866, 1878, and 1882 had no application whatever to it at the time of the execution, whether the furniture was or was not at the time in the apparent possession of S.; and that the Respondents were entitled to the furniture. *COOKSON v. SWIRE* - 9 App. Cas. 653, [54 L. J. Q. B. 249, 52 L. T. 30, [33 W. R. 181 (H.L., E.)]

**IV. BILL OF SALE—REGISTRATION—Banker and Customer—Pledge of Goods bought on Credit—Delivery Order—Memorandum in Bank Ledger—Possession—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), ss. 3, 4—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9.]** Whatever documents are included in the expression "bill of sale" as defined by the Bills of Sale Acts, they must still, by force of sect. 3 of the Bills of Sale Act, 1878, be limited to documents "whereby the holder or grantee has power to seize or take possession of any personal chattels comprised in or made subject to such" document. The Acts therefore do not include letters of hypothecation accompanying a deposit of goods or pawn tickets given by a pawnbroker or in fact any case where the object and effect of the transaction are immediately to transfer the possession of the chattels from the grantor to the grantee.—A trader, whose banking account was largely overdrawn, and who required a further advance of £500, deposited with his bank the invoice of goods bought by him on credit and consigned to him by rail, and gave the bank a delivery order directed to the railway company requiring the company to hold the goods to the order of the bank. The invoice shewed that the goods were bought on credit. On arrival of the goods the company sent the usual advice note to the bank stating that they held the goods to the order of the bank. The £500 was then advanced, and a minute of the transaction, stating the rate of interest on the advance, the terms on which the goods were to be redeemed, &c., was entered in the bank ledger, and was signed by the trader and stamped. Eleven months afterwards the trader became bankrupt:—*Held*, by Cave, J., that as the effect of the transaction was immediately to transfer the possession of the goods to the bank, the delivery order and minute did not require registration as a bill of sale, and that the title of the bank was good as against the trustee in bankruptcy.—*Semble*, a pledge by a trader of stock-in-trade which he has bought on credit, and not paid for, is not a "transfer in the ordinary course of

**IV. BILL OF SALE—REGISTRATION—contd.**

business of his trade or calling," within the exception contained in sect. 4 of the Bills of Sale Act, 1878. *Ex parte* CLOSE. *Re* HALL

[14 Q. B. D. 386, 54 L. J. Q. B. 43, 51 L. T. 795,  
[33 W. R. 228]

2. — *Bills of Sale Act, 1878* (41 & 42 Vict. c. 31)—*Bills of Sale Act 1882* (45 & 46 Vict. c. 43)—*Immediate Possession—Dock Warrant—Company.* Bills of sale given by joint stock companies are within the Bills of Sale Act, 1882.

Where a security on goods with possession is given the security is valid without registration.

A wharfinger's warrant was indorsed over to a lender with an accompanying memorandum of terms of security including a power of sale:—

*Held*, by Pearson, J., that there was a good security which did not require registration. *Re* CUNNINGHAM & Co., LIMITED. *ATTENBOROUGH'S CASE* - - 28 Ch. D. 682, 54 L. J. Ch. 448,  
[52 L. T. 214, 33 W. R. 387]

3. — *Equitable Sub-Mortgage—Bills of Sale Act, 1878* (41 & 42 Vict. c. 31), ss. 4, 10.] A memorandum by way of equitable sub-mortgage given by the transferee of a registered bill of sale accompanied by a deposit of the registered bill of sale and the transfer, does not require registration as a bill of sale under the Bills of Sale Act, 1878, even though, after the mortgage, the transferee acquires by assignment the equity of redemption of the original grantor. *Ex parte* TURQUAND. *Re* PARKER (No. 3). - - 14 Q. B. D. 636,  
[54 L. J. Q. B. 242, 53 L. T. 579,  
[33 W. R. 437 (C.A.)]

— Registration not renewed—Apparent possession.

*See* BILL OF SALE—POSSESSION.

**BILL OF SALE—Fixtures—Mortgage of.**

*See* FIXTURES. 1.

**BIRDS**—Wild Birds' Preservation Act, s. 3—Authority of owner or occupier of land.

*See* WILD BIRDS' PRESERVATION ACT.

**BOARD OF TRADE**—Power of, to require account from trustee in bankruptcy.

*See* BANKRUPTCY—TRUSTEE. 1, 2.

**BOARD SCHOOL.**

*See* ELEMENTARY EDUCATION ACTS.

**BOND**—Administration—Amount.

*See* ADMINISTRATOR. 1, 2.

— Administration—Assignment of—Creditor.

*See* ADMINISTRATOR. 3.

— Admiralty—Practice.

*See* PRACTICE—ADMIRALTY. 1, 2.

— Foreign government bonds—Sale of—Warranty.

*See* SALE OF GOODS. 5.

**BOOKS**—Company's—Solicitor's lien on, for costs.

*See* SOLICITOR—LIEN. 6.

— Scientific—Evidence.

*See* EVIDENCE. 15.

**BOROUGH**—Municipal.

*See* MUNICIPAL CORPORATION.

**BORROWING POWERS.**

*See* BUILDING SOCIETY: CORPORATION.

**BOTTOMRY BOND**—Necessity.

*See* SHIP—BOTTOMRY.

**BREAD**—*Sale of—Previous Order—Delivery by Cart without Beam and Scales*—6 & 7 Wm. 4, c. 37, ss. 6, 7.] The Appellant, a baker, having received through his traveller an order from a customer for a quarter loaf, the manager of the baker's shop selected, weighed, and appropriated to the customer a loaf which was then carried out in a cart and delivered to the customer, on credit, by a servant of the baker without being provided with any beam and scales with proper weights:—*Held*, by Grove and Hawkins, JJ., that the Appellant was rightly convicted under 6 & 7 Wm. 4, c. 37, s. 7, which enacts that every baker beyond certain metropolitan limits who shall "carry out bread for sale in and from any cart" shall be provided with a correct beam and scales with proper weights, in order that all bread sold by him may be weighed in the presence of the purchaser; and in case any such baker shall "carry out or deliver any bread" without being provided with such beam and scales with proper weights, he shall be liable to a penalty. *ROADWAY v. WARD* - 14 Q. B. D. 110, 54 L. J. M. C. 20,  
[51 L. T. 704, 33 W. R. 166, 49 J. P. 150,  
[15 Cox, C. C. 803]

2. — *Sale of—Delivery by Cart without Beam and Scales—Delivery to oblige Customer*—6 & 7 Wm. 4, c. 37, s. 7.] Sect. 7 of 6 & 7 Wm. 4, c. 37, provides that every baker or seller of bread, and every servant employed by such baker or seller of bread, who shall convey or carry out bread for sale in and from any cart, shall be provided with a beam and scales with proper weights, in order that all bread sold by any such baker or seller of bread, or his servant, may be weighed in the presence of the purchaser thereof: and in case any "such baker or seller of bread" or his servant shall carry out or deliver any bread without being provided with such beam and scales, every such baker or seller of bread shall be liable to a penalty.—A customer bought three loaves in a baker's shop. The baker weighed the loaves in her presence, and subsequently, at her request and to oblige her, his servant carried them out in a cart and delivered them at her house, without being provided with any beam and scales:—*Held*, by Field and Manisty, JJ., that the baker had not carried out or delivered the loaves as "such baker or seller of bread," and therefore could not be convicted of an offence under sect. 7. *DANIEL v. WHITFIELD* - 15 Q. B. D. 408,  
[54 L. J. M. C. 134, 53 L. T. 471, 33 W. R. 805,  
[49 J. P. 694]

**BROKER.**

*See* PRINCIPAL AND AGENT.

— Advances by, to agents for sale—Antecedent debt.

*See* FACTOR.

— Contract for payment of "differences"—Illegality.

*See* CONTRACT. 8, 9.

— Stockbroker.

*See* STOCK EXCHANGE.

**BUILDING**—General line of—Metropolis Management Acts.

*See* METROPOLIS. 8, 9.

— General Line of—Public Health Act.

*See* PUBLIC HEALTH ACTS. 14.

**BUILDING**—*continued.*

- “New building”—Wooden building brought on wheels.  
See LOCAL GOVERNMENT. 1.
- “Public building”—Ambulance station.  
See METROPOLIS. 13.
- Railway company's power to underpin.  
See RAILWAY COMPANY. 10.
- Statutory prohibition against—Sale of superfluous land.  
See LANDS CLAUSES ACT. 13.
- Support of, by soil and building not contiguous.  
See SUPPORT. 1.
- Temporary—Erection of—Continuing offence—Time.  
See METROPOLIS. 12.

**BUILDING CONTRACT**—Construction—Whether a “Lease”—*Conveyancing Act, 1881, ss. 14, 18 (xvii.).* AYLING *v.* MERCER

[W. N. (1885) 166 (C.A.)]

2. — Construction—Payments to be made in instalments and balance when work “entirely completed”—Contract contemplating extra work—Cause of action for extra work held to arise on entire completion of work. UNITED STATES *v.* GIBBONS — — — 109 U. S. 200

3. — Materials delivered, but unused—Property in—Certificates of Engineer—Payment by Instalments.] An agreement for the construction of a railway, made between the Plaintiffs and the Defendant, a contractor, provided that, once a month, the company's engineer should certify the amount payable to the contractor in respect of the value of the materials delivered, and that such certificates should be paid by the Plaintiffs seven days after presentation:—

*Held*, by Pearson, J., that the property in “materials delivered,” upon their being certified for by the engineer, passed to the company, though the materials were not fixed. BANBURY AND CHELTENHAM DIRECT RY. CO. *v.* DANIEL

[54 L. J. CH. 265, 33 W. R. 321, W. N. (1884) 243]

— Bankruptcy of builder—Contract completed by trustee.

See BANKRUPTCY—TRUSTEE. 7.

— Power to use builder's materials on his bankruptcy.

See BANKRUPTCY—PROTECTED TRANSACTION. 2.

— Ship in course of building—Distress—Privilege.

See LANDLORD AND TENANT—DISTRESS. 4.

**BUILDING ESTATE**—Part of, “injuriously affected”—Sewage farm—Compensation.  
See LANDS CLAUSES ACT. 2.

— Restrictive covenants—Breach—Acquiescence.

See COVENANT. 1.

**BUILDING SCHEME**—Light—Implied reservation—Notice.

See EASEMENT.

**BUILDING SOCIETY**—Account—Order for Accounts not referring to Settled Accounts.] Under an order directing an account, and not referring

**BUILDING SOCIETY**—*continued.*

to settled accounts, the accounting party may set up settled accounts, though the order does not direct that settled accounts shall not be disturbed, and the opposite party may impeach them, though the order does not expressly give him liberty to do so.

By the rules of a benefit society it was provided that the accounts should be audited, and that, after they had been audited and signed by the auditors, the secretary and treasurer should not be answerable for any mistakes, omissions, or errors that might afterwards be proved in them. By statute 10 Geo. 4, c. 56, sect. 33, it was directed that the accounts of a society of this description should be audited by two or more members of the society. In December, 1883, an order was made for an account of all moneys received by S., the late secretary. S. carried in audited accounts down to October, 1880, and claimed to have them treated as conclusive, while the plaintiffs claimed to have them disregarded. The Court of Appeal decided (27 Ch. D. 111, 53 L. J. Ch. 774, 51 L. T. 433, 32 W. R. 773) that accounts audited and signed according to the rules were *prima facie* evidence in favour of S., but that the plaintiffs, in taking the accounts directed by the order, might impeach such audited accounts for fraud. On examination of the audited accounts, it appeared that they had throughout been audited and signed by one person only, who was not a member of the society. Bacon, V.C., made an order expressing his opinion that the accounts had been audited in accordance with the rules, and directing the account under the order of December, 1883, to commence from October, 1880, the date of the last audit:—

*Held*, on appeal, that the accounts had not been duly audited in accordance with the statute and the rules, and that the order of the Vice-Chancellor must be discharged, but without prejudice to the right of the defendant to shew that the accounts in question were to be treated as settled accounts on any other ground than that they were audited in accordance with the statute and the rules. HOLGATE *v.* SHUTT (No. 2) 28 Ch. D. 111, 54

[L. J. Ch. 436, 51 L. T. 673, 49 J. P. 228 (C.A.)]

2. — Arbitration—Application for Settlement of Dispute by—*Building Societies Act, 1874* (37 & 38 Vict. c. (42, s. 35, sub-s. 1.) Negotiations between a member of an investment society and the society itself as to referring to arbitration a claim by the former upon his withdrawing from the society, which were held to exclude the plea—that an application for the purpose of having the dispute settled by arbitration under the rules of the society “had not been complied with within forty days,” and that the jurisdiction of the Court was admitted under the above section. SINCLAIR *v.* MERCANTILE BUILDING INVESTMENT SOCIETY

[12 C. of S. Cas. 1243 (Sc.)]

3. — Borrowing Powers—Unlimited Power of Borrowing—Deposit in Deeds—Preference Shares—Priorities in Winding-up—Certificate of Barrister—6 & 7 Wm. 4 c. 32.] A benefit building society, enrolled under 6 & 7 Wm. 4. c. 32, by its 32nd rule authorized the directors from time to time, as occasion might require, to borrow any sums of money at interest from any persons; the

**BUILDING SOCIETY—continued.**

borrowed money to be a first charge upon the funds and property of the society.

Under this rule the directors borrowed large sums for the proper purposes of the society, and deposited with the lenders, as security, title deeds of properties which had been mortgaged to the society by advanced members:—

*Held*, reversing the decision of the Court of Appeal (23 Ch. D. 440, 52 L. J. Ch. 857, 48 L. T. 134, 32 W. R. 73, 1883 Dig. col. 55) that the rule was valid, and that the lenders were entitled in the winding-up to payment out of the assets, after satisfaction of the outside creditors, and in priority to the claims of all shareholders or members; but that the lenders must give up their securities to the official liquidator, the claim to special equitable charges upon specific properties being inconsistent with the true meaning of the rule, which was that all the moneys borrowed under it were to have the benefit, equally and *pari passu*, of a first charge upon the general funds and property.

Lord Hatherley's dictum in *Laing v. Reed* (L. R. 5 Ch. 8, 18 W. R. 76) as to an unlimited power of borrowing, overruled.

The 31st rule authorized the board to issue deposit of paid-up shares for £30 each at 5 per cent. interest with the right of withdrawing the whole or part of the deposit upon notice in preference to all other shares.

This rule was struck out by the certifying barrister, but the directors printed and acted upon it by issuing shares accordingly. Some years afterwards the rule was amended, by altering £30 into £1, and the amendment was certified by the barrister; and those who had taken £30 shares had them exchanged for £1 shares, and other £1 shares were issued to new shareholders. The moneys paid by these shareholders were applied for the purposes of the society:—

*Held*, affirming the decision of the Court of Appeal, that such shareholders, whether they had become so before or after the amendment was certified, and whether they had given notice of withdrawal or not, were entitled to be paid in the winding-up in preference to the unadvanced members. *MURRAY v. SCOTT. AGNEW v. MURRAY. BRIMELOW v. MURRAY* 9 App. Cas. 519, 53 L. J. [Ch. 745, 51 L. T. 482, 33 W. R. 173 (H.L., E.)]

4. — *Borrowing Powers — Overdrawing Banker's Account—Payments to withdrawing Members—Lien, equitable—Rule in Clayton's Case* (1 Mer. 572).] A benefit building society which had no power to borrow money, was allowed by its bankers to make large overdrafts. In 1876 a memorandum was signed by the officers of the society and confirmed by the directors stating that certain deeds of borrowing members which had been deposited with the bankers were deposited not only for safe custody, but as a security for the balance from time to time. In 1881 an order for winding-up the society was made, and the bankers claimed to retain the deeds as security for the balance of their account. No evidence was given as to the application of the money which was drawn out by the society; but it was admitted that some part was applied in payment of members withdrawing from the society, and the remain-

**BUILDING SOCIETY—continued.**

der in payment of salaries, legal expenses, and expenses of mortgaged property.

The Court of Appeal (22 Ch. D. 61, 52 L. J. Ch. 92, 48 L. T. 33, 31 W. R. 98, 1883 Dig. col. 55) held that the overdrafts were *ultra vires*, being a borrowing not authorized by the rules, and not properly incident to the course and conduct of the society's business for its proper purposes; and that the bankers were not creditors of the society in respect of the overdrafts; but that they were entitled to hold the deeds as a security for repayment of so much only of the moneys advanced by them as was applied in payment of the debts and liabilities of the society properly payable and had not been repaid to the bankers, excluding payments to withdrawing members; that the burden of proving this lay on the bankers, and that in satisfying that burden the bankers could not have the benefit of the rule in *Clayton's Case* (1 Mer. 572).

The Court of Appeal made an order accordingly, directing inquiries: with a declaration that in making the inquiries the bankers were to be charged with all sums received by them on account of the society since it ceased to have any balance to its credit with the bankers, and that they were not to be allowed any sums advanced by them since that date which were applied in making payments to withdrawing members or otherwise than in paying such debts and liabilities of the society as aforesaid. The society did not appeal against the order; the bankers did.

Without expressing any opinion upon the question of payments to withdrawing members, or the bankers' right to hold the securities, *held*, that the decision and order of the Court of Appeal were in other respects right. *CUNLIFFE BROOKS & Co. v. BLACKBURN AND DISTRICT BENEFIT BUILDING SOCIETY* 9 App. Cas. 857, 54 L. J. Ch. 376, [52 L. T. 225, 33 W. R. 309 (H.L., E.)]

5. — *Borrowing Powers — Overdrawing Bankers' Account—Action for Account—Money paid in Mistake of Law—Ratification—Payment to withdrawing Members—Priority of Securities.*] A benefit building society which had never been incorporated, and had no power to borrow money, was allowed by its bankers to make large overdrafts, and the directors of the society signed a memorandum giving the bankers a lien upon all the society's deeds, to secure all moneys which from time to time might be owing by the society to the bankers on the balance of the banking account. Annual balance-sheets, shewing the amounts due to the bankers, were sent to all the members of the society, and adopted at the annual meetings. The society was afterwards ordered to be wound up, and as the overdrafts were *ultra vires*, being a borrowing unauthorized by the rules, the official liquidator brought an action against the bankers to recover all moneys which had been paid to them by the society, and applied by the bankers in discharge of their loan to the society:—

*Held*, that it was no answer to such action that the moneys had been so applied by the order of the directors of the society under a mistake of law as to their power to borrow, since the acts of the directors, both in borrowing and in directing

**BUILDING SOCIETY—continued.**

the application of the moneys, were unauthorized and not binding on the society.

*Held*, also, that there had been no ratification of such acts of the directors by all the members of the society, as such ratification could not be implied from merely seeing and not questioning the balance-sheet accounts which had been sent to them, and no ratification of such acts by the majority would bind the minority of the members.

The bankers were, however, allowed to stand in the place of withdrawing members of the society who had been paid on notice of withdrawal out of moneys so advanced by the bankers, and to receive the amounts which would be payable to such members if they had not been paid off.

The bankers were also to have the benefit of securities obtained by the society by means of the overdrafts allowed by the bankers, and to have the benefit of such securities according to their order of priority without being postponed until after other securities granted to the society. **BLACKBURN AND DISTRICT BENEFIT BUILDING SOCIETY v. CUNLIFFE, BROOKS, & CO.**

[29 Ch. D. 902, 54 L. J. Ch. 1091 (C.A.)]

6. — *Borrowing Power* — “*Deposits on Loans*” — *Winding-up* — *Priority of Depositors* — 6 & 7 Will. 4, c. 32.] One of the rules of a benefit building society, formed under the Act 6 & 7 Will. 4, c. 32, provided that the society “is established for the purpose of raising by monthly subscriptions and deposits on loans a fund to make advances to members of the value of their shares,” &c. Another rule provided that the directors should meet at specified times, “for the purpose of conducting the business of the society.” A third rule provided that at the end of every five years a general account of the affairs of the society should be prepared, shewing the gross receipts and expenditure and liabilities, and that “if on taking the accounts there appears to be a deficiency of income, by which the society may be prevented from meeting its anticipated expenditure and liabilities, the amount of such deficiency shall be equitably and equally apportioned by the directors between the investing and borrowing members, and be paid forthwith by such monthly or quarterly instalments as the directors shall determine” :—

*Held*, that the first rule authorized the borrowing of money from persons not members of the society; that the second rule enabled the directors to exercise the power; and that the third rule did not enable the directors to pledge the individual credit of the members to the lenders of money to the society, but that, even if it did, and was thus *ultra vires*, as being inconsistent with the nature of a building society under the Act, that rule might be rejected, leaving the borrowing power unaffected.

*Held*, that the lenders of money to the society were entitled, on its being wound up, to be paid out of the assets in priority to any of the members.

Decision of Kay, J. (29 Ch. D. 182, 54 L. J. Ch. 493, 52 L. T. 406, 33 W. R. 575), affirmed. *RE MUTUAL AID PERMANENT BENEFIT BUILDING SOCIETY*, — 30 Ch. D. 434, 34 W. R. 143 (C.A.)

7. — *Mortgage to Building Society—Mortgage Debt paid by Third Party and Deed, with*

**BUILDING SOCIETY—continued.**

*Statutory Receipt indorsed thereon, handed to him—Intermediate Sale and Conveyance of Part of Mortgaged Property to Fourth Party—Effect of indorsed Receipt under s. 42 of Building Societies Act, 1874 (37 & 38 Vict. c. 42).]* Land and four houses thereon were vested in a building society as mortgagees; and on the society being paid off by the Plaintiff, by request of the mortgagor, the mortgage deed, with a receipt indorsed in accordance with the 42nd section of the Building Societies Act, 1874 (37 & 38 Vict. c. 42), was with other title-deeds handed to him, and the mortgagor shortly afterwards conveyed to him the property, on mortgage for a larger loan. The mortgagor had prior to the payment to the building society conveyed one house in fee to the Defendant, who was ignorant of the mortgage to the society, and he at once took possession of it, but the Plaintiff knew nothing of the sale and purchase :—

*Held*, by Kay, J., that in accordance with previous decisions, though not agreeing with them, the effect of the indorsed receipt was to vest the legal estate in the Plaintiff, and to give him, to the extent of the money paid to the society and the interest thereon, priority over the Defendant's claim.

*Pease v. Jackson* (Law Rep. 3 Ch. 576), *Fourth City Mutual Benefit Building Society v. Williams and Marson v. Cox* (14 Ch. D. 140-147), and *Robinson v. Trevor* (12 Q. B. D. 423, 53 L. J. Q. B. 85, 50 L. T. 190, 32 W. R. 374), discussed. *SANGSTER v. COCHRANE* — 28 Ch. D. 298, [54 L. J. Ch. 301, 51 L. T. 889, 33 W. R. 221, [49 J. P. 327]

8. — *Mortgage—Reconveyance—Indorsed Receipt—Priority*—38 & 39 Vict. c. 60, s. 16, sub-s. 7.] A piece of land was mortgaged to a friendly society, and by way of second mortgage to a banking Co. A building society agreed to pay off the first mortgage, and to make a further advance, having no notice of the second mortgage. Accordingly by a deed indorsed on the first mortgage deed, the first mortgagees reconveyed to the mortgagor; and by another deed he conveyed the land to the building society to secure the repayment of the sum paid to the first mortgagees, and the further advance :—

*Held*, by North, J., that as the legal estate had passed by a reconveyance and not by a receipt under 38 & 39 Vict. c. 60, s. 16, sub-s. 7, it was vested in the building society, and gave them priority over the second mortgagees.

*Robinson v. Trevor* (12 Q. B. D. 423, 53 L. J. Q. B. 85, 50 L. T. 190, 32 W. R. 374) distinguished. *CARLISLE CITY AND DISTRICT BANKING CO. v. THOMPSON* — 28 Ch. D. 398, 53 L. T. 115

9. — *Rules—Advanced Member—Fine—Interest—Building Societies Act (6 & 7 Will. 4, c. 32), ss. 1, 2.]* By the rules of a benefit building society, “the fines incurred by all . . . mortgagors, by neglecting to make their monthly payments of principal, interest, fines, and other payments, will be at the rate of 5 per cent. per month on the total amount in arrear :—

*Held*, by Kay, J., that the monthly fine was to be calculated at the rate of 5 per cent. per month on the amount of the previous fines and other



**BUILDING SOCIETY—continued.**

payments, as well as of the principal and interest in arrear. *Held*, also, that the amount of the fine was not unreasonable. *Re MIDDLESBOROUGH BUILDING SOCIETY* 54 L. J. Ch. 592, 51 L. T. 743, [49 J. P. 278, W. N. (1884) 208]

10. — *Shares held on Trust—Payment to Registered Owner by Society without Notice of Trust.*] A. was the registered owner of shares in a building society which he held on trust for the Plaintiff. The Plaintiff had possession of the certificates, but the society never received any notice of her interest in the shares. By the society's rules the certificates must be produced on withdrawal of the money invested. A. was allowed to withdraw the amount invested without producing the certificates; he then absconded and did not account to the Plaintiff for the sums which he had received from the society.

*Held*, by North, J., that the Plaintiff could not compel the society to register her as the owner of the shares and credit her with the money paid to A. *NOLLOTH v. SIMPLIFIED PERMANENT BENEFIT BUILDING SOCIETY* - - - 34 W. R. 73

11. — *Winding-up—Shares under Notice of Withdrawal—Priority—Interest.*] A building society's rules provided that any member desirous of withdrawing should, by giving a month's notice in writing, be entitled to receive back his subscription money in the manner therein mentioned, that members withdrawing, whose shares were fully paid up, should be entitled to 5 per cent. interest from the time such shares were so paid up, or from the time the previous dividend was paid; that if more than one member should give notice to withdraw, they should be paid in rotation according to the priority of their notices. The society was ordered to be wound up under the Companies Acts, and at the date of the winding-up the shareholders consisted of three classes, viz.: (1) Members who gave early notices of withdrawal of their shares, and who claimed to be paid out of the assets in priority to those who gave later notices; (2) Members who gave later notices, and who claimed that all the withdrawing members should be paid *pari passu*; and (3) Members who gave no notices.

*Held*, by Kay, J., that the principle of *Walton v. Edge* (*supra*) applied; and that the members who gave notice of withdrawal prior to the commencement of the winding-up were entitled to be repaid the amount of their shares in priority to the other members, according to the respective dates of their notices.

*Held*, also, that such of the members whose shares were fully paid up at the dates of their respective notices were entitled to be paid interest on the amounts due to them, in the same order of priority, from the times when such shares were fully paid up, or from the times of the payment of the last dividend, until the times of the payment of the amounts due to them. *Re MIDDLESBOROUGH, REDCAR, SALTBURN-BY-THE-SEA, AND CLEVELAND DISTRICT PERMANENT BENEFIT BUILDING SOCIETY* (No. 2) - - - 53 L. T. 203

12. — *Winding-up—Withdrawal of Members—Construction of Rule "provided the funds permit"—Priorities in Winding-up.*] The rules of a benefit building society allowed any investing

**BUILDING SOCIETY—continued.**

member to withdraw "provided the funds permit," upon giving notice; and declared that "no further liabilities shall be incurred by the society till such member has been repaid." The society was ordered to be wound up and the assets were insufficient to pay everybody:—

*Held*, affirming the decision of the Court of Appeal (24 Ch. D. 42, 52 L. J. Ch. 894, 49 L. T. 730, 32 W. R. 159, 48 J. P. 196, 1884 Dig., col. 74), that those investing members who had given notice of withdrawal and whose notices had expired before the winding-up began, were entitled to be paid out of the assets (after the outside creditors) in priority to those members who had not given notice of withdrawal, notwithstanding the fact that between the giving of the notices and the winding-up there never were any funds for payment. *WALTON v. EDGE* - 10 App. Cas. 33, [54 L. J. Ch. 362, 52 L. T. 666, 33 W. R. 417, [49 J. P. 468 (K. L., E.)]

13. — *Winding up—Liability of Members—Notices of Withdrawal.*] A building society, constituted in 1868 under the Building Societies Act, 6 & 7 Will. 4, c. 32, carried on business until 1882, when, in consequence of a depreciation of its securities and other losses, the directors issued a circular to the members intimating that, looking to the state of their finances and to the fact that a number of members had given notices of withdrawal, they had resolved to take steps "to put the members on an equal footing." With this view they suggested that all the members should give notice of withdrawal. After the issue of the circular no business was done, and no new members were admitted. The society shortly afterwards went into liquidation under the Companies Acts, 1862 to 1883. *Held*, that the liability of the members to share the losses fell to be calculated as at the date of the circular, and that notices of withdrawal subsequent thereto could not receive effect.

The rules of a building society, consisting of non-borrowing and of borrowing or advanced members, provided that the borrowing members as well as the non-borrowing members should be entitled to a share of the profits in proportion to the amounts respectively standing at the credit of their shares. *Held*, that the borrowing members fell to bear a share of the losses in proportion to the sums standing at their credit at the date when the society resolved to wind up. *Brownlie v. Russell* (8 App. Cas. 235, 48 L. T. 881, 47 J. P. 757) distinguished.

The rules also provided (1) that any member holding shares on which no advance had been made might, on giving one month's notice in writing, withdraw his subscriptions paid thereon, with interest—the same to be paid as soon after the expiry of the month as the funds would permit; and (2) that any member holding a share of the same kind which by the subscriptions and the profits thereon had accumulated to £25, the amount of the share, should receive that amount with interest from the date of completion—his connection with the society thereupon ceasing—but the directors were not to be bound to pay him until three months after the payment fell due, and then only along with withdrawals in their order

**BUILDING SOCIETY—continued.**

and as the funds permitted. *Held*, that those members who had withdrawn their shares, or whose shares had matured before the stoppage, were not liable to bear any share of the losses, but were entitled to payment of the amounts standing at their credit in the order of their intimations to the liquidator; and (2) that in the case of non-borrowing members whose shares had matured in compliance with the rules, and were so marked in the books of the society, the fact of certain trifling payments still being due by the members in question did not operate to prevent their shares being held to be completed. *Walton v. Edge (supra)* followed. *NORTH BRITISH BUILDING SOCIETY v. WILLS* - - - 12 C. of S. Cas. 1271 (Sc.)

14. — *Winding-up Order, Effect of, on Position of Members—Right of Borrowing Member to refuse to pay up Loan except by Instalments.* *Held*, that the borrowing members of a building society incorporated under the Building Societies Act, 1874, who were not, under the rules of the society, entitled to share in its profits, and whose contributions were not necessary in order to the payment of the creditors of the society, could not be compelled on its liquidation to repay their debts otherwise than by instalments, as stipulated in their bonds.

Observations on *Brownlie v. Russell* (8 App. Cas. 235, 48 L. T. 881, 47 J. P. 757). *SCOTTISH PROPERTY INVESTMENT CO. v. BOYD*

[12 C. of S. Cas. 127 (Sc.)]

15. — *Withdrawal of Unadvanced Member—Power of Society to reduce Sum at the Credit of Unadvanced Members.* The rules of a building society provided that each member should be furnished with a pass book in which all payments made by him should be entered; that any unadvanced or investing member might withdraw "the whole or any portion of the sum at his credit," twenty-eight days after having given notice of his intention to do so, and after having left his pass book at the office, such withdrawing members to be paid in rotation according to the priority of their notices; and that a general meeting of the members should be held annually in March or April "for ordinary business," at which a report and statement of accounts, with a balance sheet for the year ending 18th Feb. preceding, should be submitted. The society divided its profits annually among the investing members in proportion to their capital. At the annual general meeting of the society, held on 29th March, 1882, the society approved of a report by the directors recommending that in consequence of the depreciation of the heritable property on the security of which the funds of the society were invested, a sum of 7s. 6d. per £1 should be deducted from the accounts of all shareholders and placed to a suspense account. In a question between the society and a shareholder, who subsequently gave notice of withdrawal, *held (diss. the Lord Justice-Clerk)* that the resolution was an ordinary act of management and was valid; and that the shareholder was only entitled to the sum at his credit at the date of the resolution, under deduction of 7s. 6d. per share. *AULD v. GLASGOW WORKING MEN'S PROVIDENT INVESTMENT BUILDING SOCIETY* - - - 12 C. of S. Cas. 1320 (Sc.)

**BUILDING SOCIETY—continued.**

16. — *Withdrawal of member—Unadvanced member—Liability of member withdrawing for losses appearing in balance sheet circulated after date of withdrawal but for year previous to withdrawing—Notice of withdrawal—Conditional cancellation.* *SCOTTISH PROPERTY INVESTMENT CO. v. STEWART* - 12 C. of S. Cas. 925 (Sc.)

— *Mutual loan society—Winding up—Withdrawal of members.*

*See COMPANY—MEMORANDUM.* 1.

— *Scotch law—Bond of corroboration.*

*See SCOTCH LAW.* 1.

**BULL**—*Injury by—Contributory negligence.*

*See MISCHIEVOUS ANIMAL.* 1.

**BYE-LAW**—*Under Public Health Acts—Validity.*

*See PUBLIC HEALTH ACTS.* 7, 13.

## C.

**CANADA.**

*See COLONIAL LAW.* 1-6.

**CAPE OF GOOD HOPE**—*Law of—Prescription—Water.*

*See COLONIAL LAW.* 7.

**CARRIER**—*Goods—Contract to carry by special train and boat—"Wind, weather, and tide permitting"—Measure of Damages—Loss of Market.* The defendant Co. advertised that they would convey fish from London to Boulogne at certain through rates by their special tidal train and passenger boat, "wind, weather, and tide permitting." A consignment of fish intended for the Paris market (of which fact the Defendants had notice) was delivered by the plaintiffs in London to the defendants to be carried to Boulogne. Owing to the rough weather, it was not put on board the passenger boat at Folkestone, but was sent on by a cargo boat which arrived at Boulogne too late for the train to Paris. It was delayed at Boulogne for twenty-four hours, and deteriorated, and was put up for sale in the Paris market a day late.

*Held*, by Coleridge, C.J., and Cave, J., that there was no absolute undertaking to carry the fish by any particular train and boat, and that, if the defendants had used all reasonable care to deliver the fish with the utmost possible despatch, they had discharged their obligation.

*Held*, also, that, in estimating the damages, the loss of the Paris market was not to be taken into account. *HAWES AND SON v. SOUTH-EASTERN RAILWAY CO.* - 54 L. J. Q. B. 174, 52 L. T. 514

2. — *Goods—Delivery by Consignor to Railway Co.—Reasonable precautions to insure safe delivery to consignee—Goods insufficiently addressed—Consignment by person resident abroad to person resident in England.* Where goods are transmitted through a common carrier, it is incumbent upon the consignor to take reasonable precautions to insure their safe delivery to the consignee; and whether the precautions taken were reasonable or not depends upon whether they were such as to have rendered the carrier

**CARRIER**—*continued.*

liable to the consignee in respect of the goods in case of their loss during the transit.

*Quere*, whether the rule, that the delivery of goods to a common carrier by the consignor is a delivery to the consignee, applies to the delivery of goods to a railway Co. abroad for conveyance to a consignee resident in England.

So held by Grove and Manisty, JJ.  
POINTON v. PORRIER - 49 J. P. 199

3. — *Goods—Delivery to Consignee—Non-payment of Freight by Consignee—Liability of Consignor.* The defendants hired a trolley, and agreed with the owner to pay for the carriage both ways. The defendants delivered the trolley to the plaintiffs, to be returned to the owner, under a consignment note which stated that the defendants requested the plaintiffs to receive and forward the trolley as per address and particulars on the note, and on the conditions stated therein. The note gave the name of the owner as consignee, and in a column headed "who pays carriage" was inserted "consignee." The plaintiffs delivered the goods to the consignee, who declined to pay the freight on the ground that the defendants had agreed to pay it. In an action to recover the freight from the defendants:—*Held*, by Coleridge, C.J. and Mathew, J., that under the circumstances the defendants could not be treated merely as agents of the consignee to make the contract for the carriage of the trolley, but were themselves contracting parties, and liable to pay the freight. GREAT WESTERN RAILWAY CO. v. BAGGE

[15 Q. B. D. 625, 54 L. J. Q. B. 599, 53 L. T. 225, 34 W. R. 45]

4. — *Goods—Limitation of liability—Agreement limiting common carrier's liability to that of mere forwarder of goods.* GALT v. ADAMS EXPRESS CO. - 48 Amer R. 742 (U.S.)

5. — *Limitation of Liability.*

ST. LOUIS, &C., RAILWAY CO. v. CLEARY.  
[46 Amer. R. 13 (U.S.)]

KANSAS, &C., RAILWAY CO. v. SIMPSON.

[46 Amer. R. 104 (U.S.)]

MOULTON v. ST. PAUL, &C., RAILWAY CO.

[47 Amer. R. 781 (U.S.)]

See also RAILWAY COMPANY.

— *Animals—Movement into infected District.*  
See CONTAGIOUS DISEASES ACT. 2.

— *Goods—Loss of—Measure of Damages.*  
See DAMAGES. 8.

**CASE STATED.**

See JUSTICES. 1, 2.

— *Appeal.*

See PRACTICE—APPEAL. 2.

**CATTLE**—*Dishorning.*

See CRUELTY TO ANIMALS.

**CERTIFICATE**—*Architect's—"General line of Building."*

See METROPOLIS. 9.

— *Barrister—Building Society—Rules.*

See BUILDING SOCIETY. 3.

— *Charity Commissioners—Action for Account.*  
See CHARITY. 1.

— *Engineer's—Property in Building Materials.*  
See BUILDING CONTRACT. 3.

**CERTIFICATE**—*continued.*

— *In lieu of affidavit of service out of jurisdiction.*

See PRACTICE—WRIT. 10.

— *Notarial—Affidavit sworn abroad.*

See BANKRUPTCY—EVIDENCE.

— *Of Conformity—Suspending order.*

See BANKRUPTCY—DISCHARGE. 1.

— *Patent—Validity of—Action for Infringement.*

See PATENT. 10.

— *Solicitor's—Neglect to renew.*

See SOLICITOR—CERTIFICATE.

**CERTIORARI**—*Conviction in Superior Court—Removal of Record—Jurisdiction.* An application for a certiorari to the Queen's Bench Division does not lie after conviction and judgment. *Poole's Case* (14 L. R. Ir. 14) explained. NALLY v. THE QUEEN. 16 L. R. Ir. 1, 15 Cox CC. 638

— *Special Verdict.*

See CRIMINAL LAW. 16.

**CHAMBERS**—*Practice in.*

See PRACTICE—CHAMBERS.

**CHAMPERTY**—*Action for maliciously procuring Bankruptcy—Maintenance—Bankruptcy Act 1869—Cause of Action passing to Trustee in Bankruptcy—Company in Liquidation—Corporation—Dismissing Action as frivolous and vexatious—Order xxv., r. 4.* A bankrupt whose adjudication in bankruptcy has not been set aside cannot maintain an action for maliciously procuring the bankruptcy; and such an action may be summarily dismissed upon summons as frivolous and vexatious.

*Whitworth v. Hall* (2 B. & Ad. 695) approved.

A bankrupt cannot maintain an action for maintenance on the ground that the defendant incited and supported bankruptcy proceedings in which he had no common interest, since the cause of action (if any) passed to the trustee in bankruptcy; and such an action may be summarily dismissed upon summons as frivolous and vexatious:—

*Held* also by the Earl of Selborne, L.C., that a corporation in liquidation, as distinct from the individual liquidator, is incapable of committing such an act of maintenance.

The inherent jurisdiction of the Court to protect itself from abuse is recognised and extended by Order xxv., rule 4, of the Judicature Rules of 1883. METROPOLITAN BANK v. POOLEY.

[10 App. Cas. 210, 54 L. J. Q. B. 449, 53 L. T. 163,

[33 W. R. 709, 49 J. P. 756 (H.L., E.)]

**CHANCERY ACTION**—*Subject matter below £10 in Value—Jurisdiction.*

See PRACTICE—JURISDICTION. 1.

**CHARGE**—*Solicitor's, for costs.*

See SOLICITOR—LIEN.

— *Will—Charge of debts and legacies.*

See WILL—CHARGE OF DEBTS.

**CHARGING ORDERS.**

See PRACTICE—CHARGING ORDERS.

**CHARITY**—*Account—Parties—Representative Plaintiff—Attorney-General—Fund raised by Voluntary Subscriptions—Action by some Members of Committee on behalf of all against former*

**CHARITY—continued.**

*Member—Certificate of Charity Commissioners—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137) ss. 17, 62.]* An action was brought by five of the members of a church building committee, on behalf of themselves and the other members of the committee, against a former member, claiming an account of all moneys received and paid by him in respect of the Church Building Fund during the period of his membership. The fund was raised by voluntary subscriptions; seventeen persons having constituted themselves into a committee to receive subscriptions for the purpose of improving the church of the parish, and to apply the moneys thus collected:—

*Held*, by Pearson, J., that, the members of the committee being mere agents of the subscribers, the action could not be maintained by some of the agents against others.

But *held*, also, that, even if all the subscribers were suing, the action could not be maintained in the absence of the Attorney-General.

Whether the action could be maintained without the certificate of the Charity Commissioners, *quære*. *STRICKLAND v. WELDON*. 28 Ch. D. 426.

[54 L. J. Ch. 452, 52 L. T. 247, 33 W. R. 545]

2. — *Gift to—Legacy—Lapse—Cy-près.*

A legacy to an ophthalmic hospital which had ceased to exist at the date of the testator's will *held*, by Pearson, J., to have lapsed and not to be administered *cy-près*. *Re OVEY*. *BROADBENT v. BARROW*. 29 Ch. D. 560, 54 L. J. Ch. 752.

[52 L. T. 849, 33 W. R. 521]

3. — *Gift to—Endowment of Public Institution—Purchase of Land—Hiring Rooms.* H. by her will bequeathed a collection of pictures, books, china, plate, and articles of vertu, to trustees, to form an art museum in Bath, to be called the H. museum, and bequeathed to the trustees a sum of money to be held for the perpetual protection, maintenance, and endowment of the collection. It appeared that H. intended the museum to be kept in Bath as a public institution for the benefit of the inhabitants of the city and the public generally.

*Held*, by Chitty, J., that the bequest was a valid gift for charitable purposes.

Hiring a house or room does not amount to a purchase of land; as it may be made on such terms as not to give the hirer any exclusive right of occupation. *Re HOLBURN*. *COATES v. MACKILLOP*. — — — 53 L. T. 212.

4. — *Gift to—Marshalling—Indemnity—*

*Contribution to incumbrances—Executrix allowed interest on simple contract debts paid—Costs out of rents.* A testator, entitled to estates in two counties, L. and A., both subject to incumbrances, devised them to trustees to the use of them and their heirs during his wife's life, in trust to apply the rents in payment of head-rents, fines for renewal, taxes, &c., and the interest of charges affecting them, and to pay the residue of the rents to his wife for her life; and after her death to the trustees and their heirs, in trust to apply the rents during the period of twenty-one years in payment of head-rents, fines, &c., and the interest on charges and two annuities to his nephews A. N. and C. N., and next, so far as the rents would extend, in payment of the charges

**CHARITY—continued.**

on his estates, his debts and legacies, at such time as the trustees should think most convenient. He devised portions of the L. estates to his nephews, free from incumbrances after the expiration of the period of twenty-one years; and, as to the rest, residue and remainder of his estates not before devised, charged with the residue of the incumbrances, debts and legacies then unpaid, to T. for life, remainder to T.'s first and other sons in tail male, remainder to B. for life, remainder to B.'s first and other sons in tail male, with other remainders over, and an ultimate remainder to his own right heirs. He bequeathed annuities for charitable purposes charged on the A. estates, and directed that all charges which should affect his estates, and all his debts due at his death and his legacies should be borne by, and be charges primarily affecting the "aforesaid residue" of his estates limited as aforesaid, and be paid out of the rents and profits thereof in exoneration of his personal estate and other properties bequeathed and devised to his wife and nephews, and so that such personal estate and other property should be relieved therefrom. After the wife's death estate A. was sold by the creditors, and the proceeds of the sale paid all the charges except a sum of £337:—

*Held*, that the estates devised to the Plaintiff (the eldest son of B.) at the expiration of the twenty-one years were primarily charged with and bound to indemnify the estates devised to A. N. and C. N. against so much only of the charges, debts, legacies and charitable annuities as should or ought to remain unpaid by the application of the rents for the twenty-one years to payment of the same, and to the annuities to A. N. and C. N.

Effect must be given to every part of a will if possible. But if two clauses are so irreconcilable as to be incapable of bearing a connected meaning, the earlier clause should be discarded and effect given to the later one.

*Held* also, that the charitable annuities charged on the A. estate were entitled to marshal and to stand as against the other estates in the place of the charges paid out of that estate.

By a codicil the testator directed his trustees, out of the A. estate, after payment of all debts, charges and legacies affecting the same, to apply £500 to the erection of a schoolhouse on that estate and a cottage for the residence of the teacher, and cottages for the residence of other persons, and to appropriate pieces of ground to be attached to the schoolhouse and cottages. The A. estate having been sold by creditors for paramount charges:—

*Held*, that the legacy of £500 failed. *BIGGAR v. EASTWOOD*. — — — 15 L. R. Ir. 219

5. — *Gift to such incorporated societies having authority to receive funds upon permanent trusts for charitable or educational uses, as executor might select—Uncertainty.* *PRICHARD v. THOMPSON*. — — — 47 Amer. R. 9 (U. S.)

6. — *Mortmain—Devise—Charitable Uses—Secret Trust—Church—Mortmain Act, 9 Geo. 2, c. 36—Church Building Act, 43 Geo. 3, c. 108—Site with existing Church.* A testator, by his will executed three months before his death, devised all his real estate, which included a piece

**CHARITY—continued.**

of land of about one acre, with an unconsecrated building thereon licensed by the bishop for public worship, to his wife absolutely. The devise was in pursuance of a secret agreement between the testator and his wife, whereby the latter undertook to hold the land and building upon trust, after her husband's death, to convey the same as and for a parish or district church in perpetuity:—

*Held*, by Bacon, V.-C., that the devise was legal under the statute 43 Geo. 3, c. 108, and was not rendered illegal by any provisions of the *Mortmain Act*, 9 Geo. 2, c. 36. *O'BRIEN v. TYSSSEN.* — 28 Ch. D. 372, 54 L. J. Ch. 284, [51 L. T. 814, 33 W. R. 428]

7. — *Mortmain—Discretion of Executors—Mortmain Act* (9 Geo. 2, c. 36). A testator gave her residue (which included impure personality) to her executors and trustees to give it to the poor as they should think fit.

*Held*, by Kay, J., that the gift failed in the proportion borne by the impure to the pure personality.

*Lewis v. Allenby* (L. R. 10 Eq. 668, 18 W. R. 1127) distinguished. *Re CLARK. HUSBAND v. MARTIN.* — 54 L. J. Ch. 1080, 52 L. T. 406, [33 W. R. 518, W. N. (1885) 59]

8. — *Mortmain—Interest in Land—Mortgage of Interest of Cestui que trust in Funds invested partly on Mortgage of Real Estate—Apportionment*—9 Geo. 2, c. 36, s. 3.] A testator was entitled to £800, secured by mortgage of the life interest of a widow lady in the funds held on the trusts of her marriage settlement, and the reversionary interest of one of her children in the same funds. At the date of the mortgage and of the testator's death, part of these funds was pure personality, and the rest was invested under a power in the settlement on mortgage of real estate. The testator bequeathed to charities such part of his residuary estate as could by law be so bequeathed:

*Held*, that the £800 was an interest in land within the meaning of 9 Geo. 2, c. 36, s. 3, and could not be given by will to a charity, and that there could not be any apportionment so as to make a part of the sum available for charity.

*Brook v. Badley* (Law. Rep. 3 Ch. 672) approved and followed.

Observations of Jessel, M.R., in *re Harris* (15 Ch. D. 561) explained. Decision of Pearson, J. (27 Ch. D. 318, 54 L. J. Ch. 308, 51 L. T. 85, 32 W. R. 900, 1884 Dig. col. 80) affirmed. *Re WATTS. CORNFORD v. ELLIOTT* 29 Ch. D. 947, [53 L. T. 426, 33 W. R. 885 (C.A.)]

9. — *Mortmain*—9 Geo. 2, c. 36—*Assignment of Harbour Duties—Interest in Land.*] A bond by Harbour Commissioners, in form prescribed by their Act, assigned the duties arising by virtue of the Act (which directed the application of such duties: 1st, in payment of the costs and expenses of obtaining the Act; 2, in payment of the interest of moneys advanced for defraying such expenses; 3, in payment of the interest of moneys borrowed under the Act; 4, in defraying working expenses; and 5, in payment of principal moneys borrowed under the Act) is an interest in, or affecting land within

**CHARITY—continued.**

9 Geo. 2, c. 36, and therefore cannot be given by will for charitable purposes.

*Knapp v. Williams* (4 Ves. 430, n.) followed. *Attree v. Howe* (9 Ch. D. 337) and *In re Harris* (15 Ch. D. 561) distinguished. *Jervis v. Lawrence* (22 Ch. D. 202) not followed. *Re CHRISTMAS. MARTIN v. LACON* 30 Ch. D. 544, [54 L. J. Ch. 1164, 53 L. T. 530, 34 W. R. 8]

10. — *Mortmain—Marshalling.*] P., by his will made in 1883, after certain pecuniary bequests, gave the residue of his property to trustees upon trust for sale, and out of the proceeds of the sale, and the money of which he should be possessed at the time of his death, to pay his funeral expenses, debts, and testamentary expenses, and upon trust to pay and divide the net residue unto and equally between the treasurers of four charities, A, B, C, and D. The testator declared that his pure personality should, in the first place, be applied in payment of the shares of charities C and D. Charities A and B were empowered to take land or impure personality; C and D were not. B., at the time of his death, was entitled to pure and impure personality:—

*Held*, by Chitty, J., that there was in the will a sufficient discretion to marshal the estates so that the pure personality was first to be applied in payment of the shares of charities C and D. *Be PITT. LACY v. STONE* 53 L. T. 113, [33 W. R. 653, W. N. (1885) 61]

11. — *Mortmain*—9 Geo. 2, c. 36.] A "Sacred Harmonic Society," established for the practice of choral singing, &c., and supported by members' subscriptions and receipts from concerts, is not a charity so as to be within the disabilities imposed by the *Mortmain Act*. *Re ALLSOP'S ESTATE. GELL v. CARVER* W. N. (1884) 196

— Almshouses—Receipt of relief—Parliamentary franchise.

See PARLIAMENT. 3.

— Endowed Schools Act—Denominational school—Powers of Commissioners.

See SCHOOL.

— Gift to—"Charitable and deserving objects."

See WILL—CONSTRUCTION. 27.

**CHARTER**—Market granted by.

See MARKET.

— Royal, company incorporated by—Winding-up of.

See COMPANY—WINDING-UP. 15.

**CHARTERPARTY.**

See SHIP—CHARTERPARTY.

**CHATELS**—Sale of.

See SALE OF GOODS.

**CHEQUE.**

See BANKER. 2, 3.

— Gift of, payable to donor or order.

See DONATIO MORTIS CAUSA.

**CHIEF CLERK.**

See PRACTICE—CHAMBERS. 4, 6, 7.

**CHILD**—Abduction—Connivance of child.

See CRIMINAL LAW. 1.

**CHILDREN**—Gift by will to.

See WILL—CONSTRUCTION. 6-10.

WILL—PERPETUITY. 2.

**CHIMNEY** — Sending forth black smoke — Nuisance.

See PUBLIC HEALTH ACTS. 8.

**CHOSE IN ACTION**—Assignment of.

See ASSIGNMENT OF DEBT.

— Shares—Bankruptcy Act—Reputed ownership clause.

See BANKRUPTCY—ORDER AND DISPOSITION. 2.

**CHURCH.**

See ECCLESIASTICAL LAW.

— Advowson.

See ADVOWSON.

— Devise of land for—Mortmain.

See CHARITY. 6.

**CITY OF LONDON COURT**—Jurisdiction—Costs on higher scale—County Court Act, 1867 (30 & 31 Vict. c. 142), s. 35—45 & 46 Vict. c. 57, s. 5—15 & 16 Vict. c. lxxvii., s. 74.] In a county court action where the amount claimed is less than £100, the judge has no power to order costs to be taxed on the higher scale, unless he certify that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons, or of general or public interest, and s. 35 of the County Court Act, 1867, does not confer upon the judge of the City of London Court any greater power over costs than that given to County Court judges. HOWARD v. GRAVES - 52 L. T. 858, [W. N. (1885) 113]

**CLAIM, STATEMENT OF.**

See PRACTICE—PLEADINGS.

**CLERGY.**

See ADVOWSON: ECCLESIASTICAL LAW.

**CLERK**—Articled.

See SOLICITOR—ARTICLED CLERK.

**COAL-MINE REGULATIONS ACT** — Checkweigher — Person “employed in the mine.”

See MINE.

**CODICIL**—Revocation of will by.

See WILL—REVOCATION. 2, 3.

**COLLISION.**

See SHIP—COLLISION.

**COLONIAL LAW** — Canada — British North America Act, 1867, ss. 65, 92, sub-ss. 2, 14—Quebec Act, 43 & 44 Vict. c. 9—Powers of Provincial Legislature—Duty upon Exhibits.] Held, that Quebec Act (43 & 44 Vict. c. 9) which imposed a duty of 10 cents upon every exhibit filed in Court in any action depending therein is *ultra vires* of the provincial legislature. ATTORNEY-GENERAL FOR QUEBEC v. REED 10 App. Cas. 141, [54 L. J. P. C. 12, 52 L. T. 393, 33 W. R. 618 (P.C.)]

2. — Canada—Law of Quebec—Rights and Remedies of Quebec Barristers—Quantum meruit—Canada Petition of Right Act, 1876, s. 19, sub-s. 3.] According to the law of Quebec, a member of the Bar is entitled, in the absence of special stipulation, to sue for and recover on a quantum meruit in respect of professional services rendered by him, and may lawfully contract for any rate of remuneration which is not *contra bonos mores*, or in violation of the rules of the Bar.

Where a member of the Bar of Lower Canada

**COLONIAL LAW**—continued.

(Quebec) was retained by the Government as one of their counsel before the Fisheries Commission sitting in Nova Scotia, held, that in the absence of stipulation to the contrary, express or implied, he must be deemed to have been employed upon the usual terms according to which such services are rendered, and that his status in respect both of right and remedy was not affected either by the *lex loci contractus* or the *lex loci solutionis*.

Held, further, that the Petition of Right, Canada, Act, 1876, s. 19, sub-s. 3, does not in such case bar the remedy against the Crown by petition. Kennedy v. Brown (13 C. B. (N.S.) 677) commented upon. REG. v. DOUTRE

[9 App. Cas. 745, 53 L. J. P. C. 85, [51 L. T. 669 (P.C.)]

3. — Canada—Leave to appeal in Criminal Cases—Validity of 43 Vict. c. 25 (Canada).] The rule of the Judicial Committee is not to grant leave to appeal in criminal cases except where some clear departure from the requirements of justice is alleged to have taken place.

Held, that 34 & 35 Vict. c. 28, which authorizes the Parliament of Canada to provide for “the administration, peace, order, and good government of any territory not for the time being included in any province” vests in that Parliament the utmost discretion of enactment for the attainment of those objects. Accordingly Canadian Act 43 Vict. c. 25, is *intra vires* the legislature.

Sect. 76, sub-s. 7, which prescribes that full notes of evidence be taken, is literally complied with when those notes are taken in shorthand. RIEL v. THE QUEEN 10 App. Cas. 675 (P.C.)

4. — Canada—Mortgagor and Mortgagee—Notice—Right of Intervention—Sect. 154 of Civil Procedure Code.] Where a registered deed referred to and by reference incorporated certain other transfers and agreements whereby it appeared that the deed, though professedly one of sale, was in substance and reality the transfer to the ostensible purchaser of an estate which had been specifically allotted to him as part of his share of the residue under his father's will; held, that a mortgagee from the said purchaser must be treated as having full knowledge that the property was by the will *grèvé de substitutions* in favour of the mortgagor's wife and family, his usufruct being not arrestable for his debts, especially as the mortgagee's agent was personally cognizant of the transfers and agreements of which the deed gave notice.

Certain rents and dividends of the said mortgagor having been attached, held that under s. 154 of the Civil Procedure Code those who were only entitled under the will to the corpus of the property and the shares had no right to intervene in a proceeding between the mortgagor and mortgagee to declare such rents and dividends *insaisissables* during the mortgagor's life. CARTER v. MOLSON. HOLMES v. CARTER

[10 App. Cas. 664 (P.C.)]

5. — Canada—Sheriff's Sale of an Immeuble—Duty of Vendor to give Possession—Rights of Purchaser.] A sheriff's sale of a sugar factory with the fixed machinery therein, as of an immeuble, having taken place on the distinct footing that the property was sold free of all charges, the

**COLONIAL LAW—continued.**

customs authorities on the next day, acting under a *bref d'assistance*, seized the whole machinery and refused to give or allow delivery until the whole duties chargeable in respect of the machinery were paid:—

*Held*, that whether the claim of the Crown was well founded or not, the seizing and detaining the machinery was in virtue of a warrant *ex facie* regular, and effectually prevented the seller from giving possession, and consequently relieved the purchaser from his obligation to pay the price.

There is nothing either in the Civil or Procedure Code of Lower Canada which casts upon such a purchaser the obligation to pay the price and thereafter get possession from a third party as he may. Sect. 712 of the C. P. L. C. relates to dispossessing the judgment debtor only. *Prévoist v. LA COMPAGNIE DE FIVES-LILLE*

[10 App. Cas. 643, 54 L. J. P. C. 34 (P.C.)]

6. — *Canada—Will—Power to apportion amongst a Class includes Power of Exclusion—Illusory Appointments.* Where a testator domiciled in Lower Canada bequeathed a portion of his residuary estate to his executors upon trust to “pay upon the death of his son, the capital thereof to such son’s children in such proportion as my said son shall decide by his last will and testament, but in default of such decision then share and share alike as their absolute property for ever”:—

*Held*, that the son had not only the right to apportion the capital between all his children, as well those of his then existing marriage as those of any future marriage, but also the right to dispose of the property in favour of one or more of his children to the exclusion of the others.

The English doctrine as to illusory and unsubstantial appointments under a power is not and never was any part of the old French law or of the law of Lower Canada.

An English will by a testator domiciled in Lower Canada must be interpreted with regard to the law of Lower Canada, and not that of England.

*Martin v. Lee* (14 Moore, P. C. 142) explained. *McGibbon v. Abbott*

10 App. Cas. 653,  
[54 L. J. P. C. 39 (P.C.)]

7. — *Cape of Good Hope—Roman-Dutch Law—Prescription—User and Enjoyment of Water—Rights of the Owner of Springs—Rights of Riparian Proprietors.* The respondent’s predecessor in title in 1820 constructed a watercourse on Crown lands, by means of which he diverted the water of two springs which rose thereon, so that they mingled with the waters of a private stream admittedly belonging to the farm, of which the respondent owned a portion. He did so with the license of those who acted as agents for the Government, in order to have the permanent use of the water for his farm, and continued his user for the period of prescription, after which the respondent applied for and obtained from the Colonial Government a renewal of the license originally granted to his predecessor:—

*Held*, that the user of the diverted water by the respondent’s predecessor was not precarious, and that the act of the respondent had not deprived him of the prescriptive right acquired by

**COLONIAL LAW—continued.**

his predecessor so as to enable the Crown to give to the Plaintiffs in 1881 a title to the said water.

It is very doubtful whether, by Dutch-Roman law, the owner of the sources of streams has exclusive dominion over their waters. They are at least subject to rights of user acquired by prescription, and probably also to the rights which English law recognizes in riparian proprietors to water flowing in a known or definite channel.

*Miner v. Gilmour* (12 Moore’s P. C. 181) and *Van Breda v. Silberbauer* (L. R. 3 P. C. 84, 18 W. R. 556) approved.

When a prescriptive right is once acquired, it cannot be lost by any subsequent act not amounting to a surrender, even though such act would have, previous to the acquisition of such right, rendered the user precarious. *Commissioners of French Hoek v. Hugo*

10 App. Cas. 336,  
[54 L. J. P. C. 17, 34 W. R. 18 (P.C.)]

8. — *Jersey—Set-off—Liquid Demand.* According to the law of Jersey a claim by way of compensation or set-off is admissible, when it is for a liquid demand.

Such claims having been dismissed by the Court below, the case was remanded to ascertain whether they were in whole or in part liquid debts or debts “*incontestées ou du moins incontestables*” as alleged by the appellants. *Dyson v. Godfray*

9 App. Cas. 726, 53 L. J. P. C. 94,  
[51 L. T. 580 (P.C.)]

9. — *New South Wales—New South Wales Act, 43 Vict. No. 25, ss. 3, 5—Right to run Steam Motors on Tramways.* *Held*, that the Commissioner for Railways in New South Wales has, according to the true construction of the Act 43 Vict. No. 25, s. 3, a legal right to run steam motors upon the tramway lines mentioned in the 2nd schedule thereto.

*Semble*, s. 5 is sufficient to legalise the use of steam motors upon the other tramways governed by the said Act. *Commissioners for Railways v. Toohey*

9 App. Cas. 720, 53 L. J. P. C. 91,  
[51 L. T. 582 (P.C.)]

10. — *New South Wales—Powers of Legislature—Customs Act of 1879, s. 133—Duties levied under Order in Council.* A Colonial Legislature is not a delegate of the Imperial Legislature. It is restricted in the area of its powers, but within that area it is unrestricted.

*Held*, that the Customs Regulation Act of 1879, s. 133, was within the plenary powers of legislation conferred upon the New South Wales Legislature by the Constitution Act (scheduled to 18 & 19 Vict. c. 54), ss. 1 and 45.

*Held*, further, that duties levied by an Order in Council issued under s. 133, are really levied by authority of the Legislature and not of the Executive. Also that under s. 133 “the opinion of the collector,” whether right or wrong, authorizes the action of the Governor. *Powell v. Apollo Candle Company*

10 App. Cas. 282,  
[54 L. J. P. C. 7 (P.C.)]

11. — *New South Wales—Powers of Legislature—11 Vict. No. 13, s. 1—Costs of Action of Slander.* *Held*, that the legislature of New South Wales had power to repeal the Statute of James (21 Jac. 1, c. 16), s. 6, and had impliedly done so by 11 Vict. No. 13, s. 1, which, according

**COLONIAL LAW—continued.**

to its true construction, placed an action for words spoken upon the same footing as regards costs and other matters as an action for written slander.

**HARRIS v. DAVIES** - - - 10 App. Cas. 279, 54 [L. J. P. C. 15, 53 L. T. 601 (P.C.)]

12. — *Trinidad—Status of Children born before Marriage—Law of Inheritance—Ordinance No. 24 of 1845, s. 5, and No. 7 of 1858, s. 7.* According to the Spanish laws originally in force in Trinidad, children born before marriage (contracted before the 12th of March, 1846), have the same rights of inheritance from their father and mother as children born after marriage.

S. 13 of Ordinance No. 24 of 1845, while preventing marriage after that date from legitimating the ante nati children, does not take away the status of legitimacy previously acquired.

Where a mother married before that date, died intestate in 1862, leaving seven children, three of whom were ante nati and four post nati:—*Held*, that each by inheritance took one seventh of the estate which she had acquired by purchase under s. 5 of No. 24 of 1845:—

*Held*, with regard to the shares of two ante nati who had died thereafter intestate without issue, that under s. 5 above cited and s. 7 of No. 7 of 1858, they were divisible equally amongst the four surviving children, whether ante nati or post nati, and the issue of a deceased daughter.

**ESCALLIER v. ESCALLIER** - - - 10 App. Cas. 312, [54 L. J. P. C. (P.C.)]

13. — *Victoria—Crown Liability and Remedies Act, 1865 (28 Vict. No. 241), s. 17.* The above section does not affect the prerogative of the Crown when suing in England. *Re ORIENTAL BANK CORPORATION (No. 3.)* - - 54 L. J. Ch. 327, [52 L. T. 172.]

14. — *Victoria—Victorian Common Law Procedure Act, s. 396—Power of Court to order delivery of Attorney's Bill.* Under s. 396 of the Victorian Common Law Procedure Act, the Court has power to order delivery of his bill by an attorney, whether or not it has been paid, and whether or not it is one which it would have jurisdiction to refer to taxation. **DUFFETT v. McEVoy (or McEVAY)** - - 10 App. Cas. 300, [54 L. J. P. C. 25, 52 L. T. 633 (P.C.)]

**COMMISSION**—To examine witnesses abroad.

*See PRACTICE—EVIDENCE.* 7.

**COMMISSION AGENT**—Action by, for wrongfully preventing him from earning his commission.

*See DAMAGES.* 4.

**COMMISSIONERS OF SEWERS**—Power to take lands—Right of pre-emption.

*See METROPOLIS.* 1.

— Repair of sea-wall.

*See SEWERS.*

**COMMUTAL**—Debtors' Act.

*See ARREST.* 1–3.

**COMMON LODGING-HOUSE**—Registration—Resolution of Local Board.

*See PUBLIC HEALTH ACTS.* 2.

**COMPANY.**

I. AMALGAMATION.

II. CONTRIBUTORY.

**COMPANY—continued.**

III. COST BOOK COMPANY.

IV. DEBENTURES.

V. DIRECTORS.

VI. DIVIDENDS.

VII. LIQUIDATOR.

VIII. MANAGEMENT.

IX. MEMORANDUM (AND ARTICLES).

X. PROMOTER.

XI. PROSPECTUS.

XII. REDUCTION OF CAPITAL.

XIII. SHARES.

XIV. UNREGISTERED COMPANY.

XV. VOLUNTARY WINDING-UP.

XVI. WINDING-UP.

**I. COMPANY—AMALGAMATION—Reconstruction—Right of dissentient Member to inspect before going into Arbitration—Companies Act, 1862, ss. 161, 162.]** A banking company being in the course of voluntary winding-up for the purpose of reconstruction, one of the members having been, with the others, offered 5s. in the pound for her holding in the old company, gave notice to arbitrate under section 161 as a dissentient. She then claimed the right to examine the books of the company, in order to see whether it would be better for her to accept the offer of 5s. or go on with the arbitration.

Application refused, with costs of adjournment into Court. *Re GLAMORGANSHIRE BANKING COMPANY. MORGAN'S CASE* - - 28 Ch. D. 620, [54 L. J. Ch. 765, 51 L. T. 623, 33 W. R. 209.]

**II. COMPANY—CONTRIBUTORY—Conditional application for Shares—Condition subsequent—Companies Acts, 1862, s. 23; and 1867, s. 25.]**

A. being under liabilities in respect of a company in liquidation, agreed to pay £700 to a new company, which was being formed to take over the assets and liabilities of the old one, on being relieved of his liabilities within two years. The agreement for transfer provided that every shareholder of the old company should, in respect of each share therein held by him, be entitled to require the new company to allot him one ordinary £5 share in the new company, but that no sum should be deemed to be paid up thereon. B., who had been a shareholder in the old company, applied for 700 shares in the new one, "on condition that I am credited with £1 per share paid into a fund by A." The 700 shares were allotted to him; and the word "conditional" was written against them in the share register. B. subsequently sold 400 of these shares to C., to whom the certificates of transfer were sent by the new company. In the winding-up of the new company:—

*Held*, on an application by B. and C. to have their names removed from the list of contributories, that the condition of B.'s application was a condition subsequent, and that, therefore, both B. and C. were rightly placed on the list. *Re SOUTHPORT AND WEST LANCASHIRE BANKING CO. FISHER'S CASE. SHERRINGTON'S CASE.* - - 34 W. R. 49, [W. N. (1885) 188 (C.A.)]

2. — *Contract to take Shares—Cancellation of Shares—Rescission of Contract—Companies*



**II. COMPANY—CONTRIBUTORY—continued.**

*Act, 1862, s. 23.]* W. T. and P. applied for shares in a limited company established for the purpose of purchasing and working a concession from a foreign government. T. and P. were directors of the company. The directors sent letters of allotment to the applicants, in which they called on them to pay the allotment money by a certain day. But their names were never entered on the register, nor was any allotment money paid nor certificates of shares issued. Three years afterwards the directors made a fresh arrangement with the owners of the concession, under which they purported to cancel the old allotments and to allot all the shares, except a few reserved for the directors and other persons, to the vendor of the concession and his nominees. The shares were accordingly entered in the register in their names. Soon afterwards the company was ordered to be wound up, and the liquidator applied to the Court to rectify the register by placing on it the names of W. T. and P. for the number of shares allotted to them, and to diminish the number of shares for which the vendor of the concession was entered on the register to a like amount:—

*Held* (affirming the decision of Chitty J.), that whether the effect of the application and allotment was that W. T. and P. became actual members of the company in respect of the shares allotted to them or only agreed to become such members, it was now too late, under the circumstances which had occurred, for the company to insist on placing their names on the register.

But, *semble*, according to the true construction of the 23rd s. of the Companies Act, 1862, they did not become members in respect of the allotted shares, the entry on the register being a condition precedent to such membership.

*Held* also, that the fact that T. and P. were directors whose duty it was to place the allottees on the register did not affect the question. *Re FLORENCE LAND AND PUBLIC WORKS COMPANY. NICOL'S CASE. TUFNELL AND PONSONBY'S CASE.* [29 Ch. D. 421, 52 L. T. 933 (C.A.)]

3. — *Contract to take Shares—Allotment—Delay—Repudiation after winding-up.]* B., a merchant resident in South Africa, at the solicitation of the local agent of a company, signed, in July, 1882, an application for shares in the company. The company was not registered until December, 1883, when shares were allotted to B., and a notice of allotment sent to him, which he received in February, 1884. B. then called upon the local agent and verbally repudiated the shares; but the local agent stated that he was not then instructed in the matter. B. then proceeded to England, and arrived here on May 29, 1884. On June 6, 1884, he took proceedings to have his name removed from the register. On May 23, 1884, a petition for the winding-up of the company was presented, and a winding-up order was subsequently made thereon.

*Held*, by Kay, J., that as B. had not repudiated the shares in any effective way until after the winding-up had begun, he was liable as a contributor. *Ramsgate Victoria Hotel Company v. Montefiore* (L. R. 1 Ex. 109, 35 L. J. Ex. 90, 13 L. T. 715, 14 W. R. 335), and *Re Bowron & Co.* (L. R. 3, Ch. 592, 37 L. J. Ch. 225, 19 L. T. 58, 16 W. R.

**II. COMPANY—CONTRIBUTORY—continued.**

1093) distinguished. *Ex parte BOYLE. Re LAND, LOAN, MORTGAGE AND GENERAL TRUST CO. OF S. AFRICA* — 54 L. J. Ch. 550, 52 L. T. 501, [33 W. R. 450, W. N. (1885) 59.

4. — *Unlimited Company—Call—Affidavit in support—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 102—G. O. Nov., 1862, rr. 33, 34, 35; Sched. 3, Form 33.]* The Court has power, in the winding up of an unlimited company, to make a call under s. 102 of the above Act, on a proper case shown by the official liquidator; and the debts of the company not having been paid, an affidavit by the liquidator that the call was required for "the adjustment of the rights and liabilities of the members amongst themselves," was held by Bacon, V.-C., to imply that the call was necessary for the payment of debts, and to be a sufficient compliance with form 33 of the G. O. Nov. 1862, r. 33. *Re NORWICH EQUITABLE FIRE ASSURANCE CO. MILLER'S CASE* 54 L. J. Ch. 141, [51 L. T. 619, 33 W. R. 271]

— Call made after death of—Grant of administration to company's nominee.

*See ADMINISTRATOR.* 5.

— Contract for shares—"Fully paid up shares"—Registration.

*See COMPANY—SHARES.* 3.

— Deceased—Balance order—Executor—Retainer.

*See EXECUTOR—ADMINISTRATION.* 8.

— Director—Payment by—Set-off.

*See COMPANY—WINDING-UP.* 16.

**III. COMPANY—COST-BOOK COMPANY—Cost-book Mine—Stannaries Court—Winding-up Petition—Order for Inspection of Documents—18 & 19 Vict. c. 32, s. 22.] The practice of the Stannaries Court is the same as that of the High Court of Justice, that the mere fact of a petition is not enough to justify an order for inspection of books. But if grounds are shewn, the petition may properly be ordered to stand over to allow the petitioner to enforce his right as a shareholder to inspection.**

The right of inspection under the 22nd section of the Stannaries Act, 1855, is personal to the shareholder, and does not extend to his solicitors or agents. *Re WEST DEVON GREAT CONSOLS MINE* [27 Ch. D. 106, 51 L. T. 841 (C.A.)]

**IV. COMPANY—DEBENTURES—Action by Debenture-holders—Insufficient Estate—Costs—Priority—Receiver and Manager—Trustees—Solicitor—Lien—Practice—Costs—Set off—Rules of Supreme Court, 1883, Order LXV., r. 27, sub-s. 21.] In a suit instituted by a debenture-holder of a company, on behalf of himself and the other debenture-holders, against the company and the trustees of a deed, by which leasehold collieries and plant of the company were assigned to trustees to secure the payment of the debentures, to enforce the security, a receiver and manager was appointed. He worked the collieries for some years at a loss. Ultimately the property was sold, the Plaintiff having the conduct of the sale, and the purchase-money was paid into Court. The fund was insufficient. The original Plaintiff became bankrupt in the course of the proceedings, and another debenture-holder was substituted for**

**IV. COMPANY—DEBENTURES—continued.**

him as Plaintiff. On the further consideration of the suit:—

*Held*, by Pearson, J., that the costs and other expenses must be paid out of the fund in the following order:—

(1.) The Plaintiff's costs of the realization of the property, including the costs of an abortive attempt to sell.

(2.) The balance due to the receiver and manager (including his remuneration) and his costs of the suit.

(3.) The costs, charges, and expenses of the trustees of the deed.

(4.) The two Plaintiffs' costs of the suit, *pari passu*.

When the second Plaintiff was substituted for the first an order was made that the solicitors of the first Plaintiff should, without prejudice to their lien (if any) deliver up to the solicitor of the second Plaintiff all documents in their possession relating to the conduct and prosecution of the suit:—

*Held*, that the solicitors of the first Plaintiff had no lien on the documents which could entitle them to priority in respect of their costs.

Two summonses taken out by the Plaintiff were heard with the further consideration of the suit, and were dismissed with costs.

*Held*, that these costs must be set off against the costs which the Plaintiff was entitled to receive out of the fund.

Under sub-sect. 21 of rule 27 of Order LXV. of the Rules of the Supreme Court, 1883, costs which a party is ordered to pay personally may be set off against costs which he is entitled to receive out of a fund in Court. *BATTEN v. WEDGWOOD COAL AND IRON CO.* - 28 Ch. D. 317, [54 L. J. Ch. 686, 52 L. T. 212, 33 W. R. 303]

2.—*Action by Debenture-Holders—Winding-up—Appointment of Liquidator as Receiver.* In an action by a debenture holder the Plaintiff moved for the appointment of a receiver, and the motion was heard directly after a creditor's winding-up petition. *Bacon, V.C.*, made a winding-up order, but refused to appoint a receiver, on the ground that the appointment of a liquidator would sufficiently protect the debenture-holders.

*Held*, by the Court of Appeal, that the debenture-holders were entitled to special protection, and the official liquidator was appointed receiver, he not objecting. *WILLMOTT v. LONDON CELLULOID CO.* 52 L. T. 642, W. N. (1885) 29 (C.A.)

*See also re HOUSE IMPROVEMENT SUPPLY ASSOCIATION: GILES v. NUTHALL: DAVIS v. HOUSE IMPROVEMENT SUPPLY ASSOCIATION* W. N. (1885) 51 (C.A.)

3.—*Charge on all Property, present and future—Floating Security—Power of Company to deal with Property.* A company, which carried on the business of ironmasters and manufacturers, issued debentures for a total sum of £500,000, by which they charged their undertaking, works, stock-in-trade, plant, moneys, and other real and personal property, both present and future, with the payment of the sums secured by the debentures "to the intent that the same charge shall, until default in payment of the principal or in-

**IV. COMPANY—DEBENTURES—continued.**

terest to accrue due or become payable in respect of the said sum of £500,000, or some part thereof, be a floating security upon the undertaking, works, and property of the company, not hindering sales or leases of, or other dealings with, any of the property or assets of the company in the course of its business as a going concern." The company afterwards contracted to sell some of its land:—

*Held*, by Pearson, J., that the purchaser was entitled to reasonable evidence that there had been no default in the payment of the principal or interest of the debentures.

*Re Florence Land and Public Works Company* (10 Ch. D. 530) and *re Colonial Trusts Corporation* (15 Ch. D. 465) distinguished. *Re HORNBY AND HELLARD* 29 Ch. D. 736, 54 L. J. Ch. 919, [53 L. T. 562]

4.—*Deed of Trust—Right of Holder to enforce Equitable Charge—Consent of majority.* *KEMPE v. JONES* - W. N. (1884) 214 (C.A.)

5.—*Mortgage—Priority.* The directors of a company with power to borrow or create mortgages or issue debentures, issued debentures purporting to charge the undertaking and the hereditaments and effects of the company with the payment of the sums mentioned in the debentures respectively, to the intent that the debentures might rank equally as a first charge on the undertaking, hereditaments and effects of the company. They afterwards, in consideration of £4000 advanced and applied to the purposes of the company, deposited with the Plaintiff the title deeds of the colliery the property of the company, and by a written agreement charged the property comprised in the deeds with the payment to the Plaintiff of £4000 and interest:—

*Held*, by North, J., that the mortgage to the Plaintiff had priority over the debentures. *WHEATLEY v. SILKSTONE AND HAIGH MOOR COAL CO.* - 29 Ch. D. 715, 54 L. J. Ch. 778, 52 [L. T. 798, 33 W. R. 797]

6.—*Priorities—Companies Clauses Acts*, 1845 (8 Vict. c. 16), ss. 38, 42, 44: and 1863 (26 & 27 Vict. c. 118) ss. 22, 23, 24, 30.] By the Companies Clauses Act, 1863, s. 30, the priority of mortgages and bonds of a company, granted before the "creation" of debenture stock, is saved. A railway company, having unexhausted powers of borrowing, obtained a special Act giving them further powers to borrow on mortgage, and "in lieu thereof," to create and issue debenture stock; and provided for the priority of existing mortgages or bonds. The company exercised such borrowing powers by the creation of debenture stock. Subsequent to such creation the company alternately issued debenture stock and bonds. The income was insufficient to pay the interest on the debenture stock and bonds: *Held*, by Kay, J., that the special Act in effect substituted the time of the passing of that Act for the creation of the debenture stock (the time specified in s. 24 of the Companies Clauses Act, 1863) as the period for determining in what order the stock was to rank, and also that the interest on all mortgages or bonds, subsisting at the time of the special Act, had priority over the interest on debenture stock granted by virtue of that Act, and that the interest on bonds granted

**IV. COMPANY—DEBENTURES—continued.**

after the passing of that Act ranked *pari passu* with the interest on the debenture stock. *Re BURY PORT AND GWENDREATH VALLEY RAILWAY Co.* 54 L. J. Ch. 710, 52 L. T. 842, 33 W. R. 741, [W. N. (1885) 119]

— Bequest of “shares”—Debentures not included.

*See WILL—CONSTRUCTION.* 40.

— Issue of—Misstatement of object of loan.

*See COMPANY—PROSPECTUS.*

— Whether “securities for money.”

*See WILL—CONSTRUCTION.* 38.

**V. COMPANY—DIRECTORS—Fees—Priority—Companies Act, 1862 (25 & 26 Vict. c. 89) s. 38, sub-s. 7.]** In a company where directors were obliged to be members:

*Held*, by Pearson, J., that a director's unpaid fees were debts due to him in his character of member, and to be postponed to outside creditors. *In re LEICESTER CLUB AND COUNTY RACECOURSE Co. Ex parte CANNON* 30 Ch. D. 629, 53 L. T. [340, 34 W. R. 14]

2. — *Liability—Qualification of Directors provided by Promoter—Joint and several Liability.* The first five directors of a company being bound by the articles of association to hold twenty shares each as a qualification, accepted, with the knowledge and approval of each other, twenty fully paid shares each from the promoter who had received them as cash from the company:—

*Held*, by Pearson, J., upon summons by the official liquidator in the winding-up, that all the directors were jointly and severally liable to pay the full value of the shares.

One only of the five directors, upon finding that he was not justified in receiving the shares without payment, offered to pay the full sum due from him, and gave a cheque for the amount, which, however, was accepted as an advance to the company, and was added to previous advances made by him for preliminary expenses:—

*Held*, that this director was not at liberty to set off the value of his shares against the amount paid in respect of advances, though he would have a claim against the company for those advances. *In re CARRIAGE CO-OPERATIVE SUPPLY ASSOCIATION (ROBERTS' CASE)* 27 Ch. D. 322, [53 L. J. Ch. 1154, 51 L. T. 286, 33 W. R. 411]

3. — *Liability—Misfeasance—Agent for purchase—Sale of Agent's own Property to Principal—Non-disclosure—Account of Profit made by Agent.* In 1871 certain coal areas were purchased for £5500 by six persons, of whom F. was one, and were vested in G. as a trustee for them without disclosing the trust. In 1873 a company was formed for the purpose of purchasing these areas and other property. F. was one of the directors, and as such he concurred in effecting a purchase by the Company from G. for £12,000 cash, and £30,000 in fully paid-up shares, without disclosing the fact that F. was a part owner. In 1875 the company was ordered to be wound up. In 1878 a meeting of contributories was called, at which two rival schemes were brought forward, one for repudiating the purchase of the coal areas, the other for adopting the purchase

**V. COMPANY—DIRECTORS—continued.**

and selling the property. The latter scheme was adopted, and was confirmed by the Court. The liquidator accordingly sold the property, but at a heavy loss. A contributory then took out a summons under sect. 165 of the Companies Act, 1862, to make F. liable for misfeasance as a director in allowing the company's seal to be affixed to the agreement for purchase by the company. Mr. Justice Pearson dismissed the summons, holding that though the company would have been entitled to rescind the contract, yet as rescission had become impossible no relief could be given against F.; that as F. when he acquired his interest in the property was not a trustee for the company, he could not be treated as having purchased on behalf of the company at the price he gave, and therefore was not chargeable with the difference between the price at which he bought and the price paid by the company, and that he could not be charged with the difference between the price paid by the company and the value of the property when the company bought it, as this would be making a new contract between the parties. (26 Ch. D. 221, 54 L. J. Ch. 217, 50 L. T. 390, 32 W. R. 853, 1884 Dig. col. 90.)

*Held*, by Cotton and Fry, L.JJ. *dissentiente* Bowen, L.J., that this decision was right. *Re CAPE BRETON Co.* 29 Ch. D. 795, 54 L. J. Ch. 822, [53 L. T. 181, 33 W. R. 788 (G.A.)]

4. — *Liability—Gift from promoters of money to buy shares—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 165.]* The promoters of a company presented one of the directors with £1000 to buy one hundred shares in the company, which was the qualification of a director, the present being expressed to be given as part commission, in respect of certain contracts he was about to enter into at the request of the promoters, in relation to the proposed company. The director afterwards took part in making an agreement for the purchase by the company of a quarry of which the promoters were part owners, the carrying out of which was stated in the memorandum and articles of association of the company to be the first object of the company. The company was subsequently wound up.

*Held*, by Kay, J., that the director was liable to account to the liquidator for the value of the shares, at the value at which they stood at the date he received the present, together with interest at five per cent. from the date of such gift. *Re DRUM SLATE QUARRY COMPANY* [55 L. J. Ch. 36, 53 L. T. 250]

5. — *Liability—Loan Society—Ultra Vires—Personal Security—False Balance Sheets—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 22, 165.]* The official liquidator of a loan society moved to make its directors and officers liable for losses arising from one hundred loan transactions on the grounds (1) that, as they had advanced large sums by way of loans on the security of the society's own certificates, they had acted *ultra vires*, because by the memorandum of association, and the articles, they were expressly forbidden to accept as security for repayment of advances, “personal securities, either by bonds, bills of exchange, or promissory notes”; (2) that, if this were *intra vires*, the other securities which they

**V. COMPANY—DIRECTORS—continued.**

had accepted were not *bonâ fide* ones; (3) that, if their loans were not fraudulent, they had been guilty of such gross negligence and imprudence as to make them liable; and (4) that they had concealed the true state of the affairs of the society from the members by means of false balance sheets.

*Held*, by Chitty, J., that the charges of fraud and gross negligence had not been sustained, that the directors could in no sense be held responsible for the faulty basis on which the society had been formed, or for the errors of the actuaries and accountants, that the members had been cognisant of, and ratified all that had been done; that the society's own certificates were not such personal security for advances as was forbidden by the articles, and that it was not *ultra vires* the directors to advance money on such security (as it was security of personal estate as distinguished from personal security); and that the motion must be dismissed with costs. *GRIMWADE v. MUTUAL SOCIETY* - - - 52 L. T. 409

6. — *Liability—Breaches of Trust—Indirect Sanction.*] A director of a company from the time that he becomes aware of breaches of trust by his co-directors incurs liability, even though he did not directly sanction them, and may be held personally answerable for any losses sustained thereby, if he remains passive and omits to take proper steps to prevent such misconduct, and to institute, if necessary, proceedings against his colleagues in default. *JACKSON v. MUNSTER BANK* - - - 15 L. R. Ir. 356

— *Liability—Notice of trust as to shares.*

*See COMPANY—SHARES. 4.*

— *Payment by—Contributory—Set off.*

*See COMPANY—WINDING UP. 16.*

**VI. COMPANY — DIVIDEND** — *Guarantee of—Application of moneys received under guarantee.* *RICHARDSON v. ENGLISH CROWN SPELTER CO.*

[W. N. (1885) 31

— *Bonus dividend—Capital or income.*

*See EXECUTOR—ADMINISTRATION. 2.*

**VII. COMPANY—LIQUIDATOR—Rates—Business carried on by the Liquidator—Beneficial Occupation.**] An hotel company was wound up under an order of the Court, and the liquidator was directed to sell the hotel, but with liberty to carry on the business till the sale, so as to sell it as a going concern. The liquidator accordingly carried on the business in the hotel, but made no profit by it. Shortly after the commencement of the winding-up a poor-rate was made, and the overseers claimed payment of the rate from the liquidator in respect of his occupation of the hotel:—

*Held* (affirming the decree of the Vice-Chancellor of the county palatine of Lancaster) that the rate must be paid in full.

*Re West Hartlepool Iron Company* (34 L. T. (N.S.) 568), and *Re Watson, Kipling, & Co.* (23 Ch. D. 500, 52 L. J. Ch. 473, 49 L. T. 115, 31 W. R. 574), distinguished. *Re INTERNATIONAL MARINE HYDROPATHIC CO.* - - - 28 Ch. D. 470,

[33 W. R. 587 (C.A.)

2. — *Rates—Business Premises, Occupation of, by Liquidator—Beneficial Occupation.*] A com-

**VII. COMPANY—LIQUIDATOR—continued.**

pany was being wound up under supervision, the liquidation commencing in 1882. The liquidator did not keep the concern in full work, but remained in occupation of the business premises for the purpose of carrying out some pending contracts, finishing a quantity of unfinished articles, and storing and keeping in order a quantity of completed articles with a view to selling them. In March, 1883, a rating authority made a rate for 1883 on all the property within the district. The liquidator allowed the time for appealing against the assessment to go by. The rating authority applied to the Court for payment of the rate in full:—

*Held*, that as the liquidator had from the commencement of the winding-up occupied the property for the purpose of the company, and with a view to acquiring gain or avoiding loss to the company, the rate ought to be paid in full.

Whether, in order to entitle the rating authority to be paid in full, it is necessary for the liquidator to have any more beneficial occupation of the property than is required under the ordinary law as to rating, *quære*. The test in *Re West Hartlepool Iron Company* (34 L. T. (N.S.) 568) doubted.

Where the liquidator, being in possession, does not appeal against the assessment, the Court will not refuse to order payment of the rate in full on the ground of its being too high, except perhaps in extreme cases. *Ex parte BIRMINGHAM (MAYOR OF). Re NATIONAL ARMS AND AMMUNITION CO.*

[28 Ch. D. 474, 54 L. J. Ch. 673, 52 L. T. 237,

[33 W. R. 585, 49 J. P. 90 (C.A.)

— *Action by—Voluntary winding-up—Motion to strike out counterclaim.*

*See COMPANY—VOLUNTARY WINDING-UP. 1.*

— *Appointment of, as receiver—Action by debenture holders.*

*See COMPANY—DEBENTURES. 2.*

— *Documents in possession of—Production of.*

*See PRACTICE—DISCOVERY—DOCUMENTS. 2.*

**VIII. COMPANY—MANAGEMENT—Special Resolution—Time—Computation of—Interval—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51.]** The interval of not less than fourteen days which under sect. 51 of the Companies Act, 1862, is to elapse between the meetings passing and confirming a special resolution of a company is an interval of fourteen clear days, exclusive of the respective days of meeting, and therefore a special resolution for reduction of capital passed at a meeting held on the 25th of February, 1885, and confirmed at a meeting held on the 11th of March, 1885, was held to be bad. *Re RAILWAY SLEEPERS SUPPLY CO.* 29 Ch. D. 204, 54 L. J. Ch. 720,

[52 L. T. 731, 33 W. R. 595

**IX. COMPANY—MEMORANDUM (AND ARTICLES)—Articles—Mutual Loan Society—Winding-up—Withdrawal of Members—Payment out of Special Fund—Applicability of Rules to Winding-up.]** The rules of an unlimited mutual loan society provided that a separate fund should be formed by the subscription of members joining in each year, which subscriptions might, with the consent of the directors, be paid in advance.

**IX. COMPANY—MEMORANDUM (AND ARTICLES)—continued.**

The accounts of each fund were to be kept distinct, and the members were to receive advances called "appropriations," out of the accumulations of the particular fund to which they subscribed. The appropriations were to be repaid by instalments extending over twenty years. Members might withdraw on giving notice, and were in that case entitled to a return of their subscriptions, together with payment of the bonuses declared in respect of their shares, such payments to be made in the order of the dates of their notices, and only out of moneys received after the date of their notices in repayment of appropriations.

When appropriations had been made to all members of a fund, or before that under certain circumstances, the fund was to be declared closed, and the accumulations were to be divided among the continuing members of the fund.

The company was wound up voluntarily, and the liquidator applied for the direction of the Court as to the distribution of the assets among the members, there being no outside creditors.

There were four classes of members whose interests were in dispute:—

1. Members who had given notice of withdrawal before the closing of their funds, and before the commencement of the winding-up.
2. Members who had given notice of withdrawal after the closing of their funds, but before the commencement of the winding-up.
3. Continuing members who had paid subscriptions in advance.
4. Continuing members who had not paid any subscriptions in advance.

*Held*, by Kay, J., that the provision for the repayment of withdrawing members out of the particular fund ceased to apply on the winding-up of the company, and that those members who had given notice of withdrawal before the commencement of the winding-up had no priority over the continuing members:—

*Held*, also, that the continuing members who had paid their subscriptions in advance had no priority over the other members:—

But, *held*, by the Court of Appeal, that, according to the true construction of the articles, members who had given notice of withdrawal before the closing of their fund and before the commencement of the winding-up had a charge on the repayments of appropriations belonging to their particular funds; that such charge did not cease on the closing of the fund or on the winding-up, and that they were therefore entitled to be paid in full out of such repayments in priority to all other members.

*Walton v. Edge. Re Blackburn Building Society* (col. 66) followed.

*Re Mutual Society* (24 Ch. D. 425, n.) distinguished. *In re ALLIANCE SOCIETY* 28 Ch. D. [559, 54 L. J. Ch. 540, 52 L. T. 695 (C.A.)]

2. — *Articles—Lien on Shares—Mortgage of Shares—Priority—Statute of Frauds—Agreement not to be performed within a year—Contract—Consideration—Compromise of intended action—Pleading.* It was provided by the articles of the defendant company that the company should have a first and paramount lien on each member's

**IX. COMPANY—MEMORANDUM (AND ARTICLES)—continued.**

shares for his liabilities to the company. G., a shareholder, in 1882, mortgaged his shares to the plaintiff. In 1883 the company and shareholders threatened an action against G. in respect of alleged misrepresentations as to the value of property sold by G. to the company. G. signed a letter guaranteeing that certain dividends should be earned and paid by the company during ninety years, or that he would pay the deficiency. The company and shareholders thereupon abandoned their intention of suing G. The plaintiff having brought an action against the company and G., claiming a first charge on G.'s shares, the company pleaded their articles and G.'s undertaking. As to the undertaking, the plaintiff pleaded in reply the Statute of Frauds.

*Held*, by North, J. (1), that the company's articles did not give them priority over the plaintiff's charge.

The Court being of opinion on the evidence that, though no case of misrepresentation by G. was shown, yet the consideration for his undertaking, though not expressed, was that the threatened proceedings against him should not be taken:—

*Held* (2), that the company had performed their part of the contract within the year, and that the Statute of Frauds did not apply.

*Held* (3), that the consideration for G.'s undertaking was sufficient, whether the company had reasonable grounds for their threatened action or not, if they were acting *bonâ fide*. *Callisher v. Bischoffsheim* (L. R. 5 Q. B. 449), followed.

*Held* (4), that it was not competent to the plaintiff to plead the Statute of Frauds. *MILES v. NEW ZEALAND ALFORD ESTATE CO.* 54 L. J. [Ch. 1035, 53 L. T. 219, W. N. (1885) 142]

3. — *Memorandum—Preference and Ordinary Shares—Special Resolutions altering Appropriation of Revenue—Ratification—Rights of Shareholders under original Contract.* The memorandum of association of a company incorporated under the Companies Act, 1862 (25 & 26 Vict. c. 89), stated that a portion of the shares were to have a right of receiving a dividend by preference to the other shares, and that the preference shares should have a right to a dividend of 7 per cent. per annum in priority over the ordinary shares, and to one-fifth of the remainder of the net revenue after a deduction of a sum sufficient for paying 7 per cent. per annum on the ordinary shares; and also that those shares should have a right to the rest of the dividend, whatever it might be, up to 7 per cent. after paying 7 per cent. to the preference shares and to four-fifths of the remainder of the net revenue, after deduction of a sum sufficient to pay the dividends to the preference and ordinary shares.

The directors applied the profits of the company in substantial accordance with the provisions in the articles of association till November, 1872, when the company passed special resolutions which altered the priorities and payments of the net revenue as between the preference and ordinary shareholders, and which provided for the redemption of shares out of the surplus profits, and they were acted upon without any objection being raised to them by any of the members of

**IX. COMPANY—MEMORANDUM (AND ARTICLES)—continued.**

the company till July, 1883, when the company passed a special resolution by which the original appropriation of the revenue as provided by the memorandum of association was restored:—

*Held*, affirming the decision of Kay, J. (28 Ch. D. 56, 54 L. J. Ch. 12, 51 L. T. 766), that the resolutions of 1872 were not valid, as they altered a condition in the memorandum of association in contravention of sect. 12 of the Companies Act, 1862:

*Held*, also, that even if the resolutions of 1872 would be valid if ratified by every member of the company, there was no evidence on which the Court, acting as a jury, ought to infer that every member of the company had ratified such resolutions with full knowledge of what had been done. *ASHBURY v. WATSON* - 30 Ch. D. 376, [54 L. J. Ch. 985, 33 W. R. 882 (C.A.)]

— Articles—Taking Poll.

See COMPANY—VOLUNTARY WINDING-UP. 3, 4.

— Loan society—Advances on personal security.

See COMPANY—DIRECTORS. 5.

**X. COMPANY—PROMOTERS—Agreement by Solicitors of Separate undertaking—Liability to general Creditors.]** Where the solicitors of the promoters of an Act of Parliament, whereby a company is created and empowered to raise capital and carry out works; and, if they so resolve, to raise separate capital for, and carry out separately, certain portions of such works as a separate undertaking; agree to pay certain claims out of the first capital raised by the company, and the company duly raise capital for the separate undertaking and none other, neither the company nor the solicitors are liable under the agreement. *ALLAN v. REGENT'S CANAL, CITY AND DOCKS RY. CO.* - 54 L. J. Q. B. 201

2. — *Misfeasance—Present for Placing Shares—Notice—Statute of Limitations—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 165.]* By an arrangement between S., the promoter of the F. Co., and a syndicate of vendors, he was to receive 1000 B shares in consideration of his taking or placing 500 A shares. The 1000 B Shares were afterwards allotted to him. After the Co. was formed, notice of this transaction was given to the directors, but no action was taken in the matter, the board consisting of persons more or less implicated in the arrangement. In the winding-up of the Co., the liquidator took out a summons to recover from S. the value of the 1000 B shares, on the ground that the circumstances under which they were allotted amounted to a misfeasance on his part. *Held*, by Kay, J., that S. had been guilty of a misfeasance as against the Co., and as the shares were now valueless, must pay to the liquidator the amount of the value of the shares when he received them, but without interest, no dividend having been paid on them.

*Held*, further, that, though more than six years had elapsed since the notice to the directors, the liquidator's claim was not barred by the statute of limitations, for though notice to the directors is *prima facie* notice to the Co., it was not so

**X. COMPANY—PROMOTERS—continued.**

when, as in this case, it was certain that the directors would not communicate the information to the shareholders. On appeal, a compromise was sanctioned by the Court, Baggallay, L.J., observing that the argument for the appellant seemed to shew that the question was a doubtful one. *Re FITZROY BESSEMER STEEL, &C., CO.* 50 L. T. 144, 32 W. R. 475, 33 W. R. 312 (C.A.)

— Gift by, to directors, of qualification shares.

See COMPANY—DIRECTORS. 2, 4.

**XI. COMPANY—PROSPECTUS—Misrepresentation—Issue of Debentures—Misstatement of Object of Loan—Contributory Mistake of Plaintiff.]** A misstatement of the intention of the defendant in doing a particular act may be a misstatement of fact, and if the plaintiff was misled by it an action of deceit may be founded on it.

Where a plaintiff has been induced both by his own mistake and by a material misstatement by the defendant to do an act by which he receives injury, the defendant may be made liable in an action for deceit.

The directors of a company issued a prospectus inviting subscriptions for debentures, and stating that the objects of the issue of debentures were to complete alterations in the buildings of the company, to purchase horses and vans, and to develop the trade of the company. The real object of the loan was to enable the directors to pay off pressing liabilities. The Plaintiff advanced money on some of the debentures under the erroneous belief that the prospectus afforded a charge upon the property of the company, and stated in his evidence that he would not have advanced his money but for such belief, but that he also relied upon the statements contained in the prospectus. The company became insolvent:—

*Held*, affirming the decree of Denman, J. (32 W. R. 848, 1884 Dig., col. 100), that the misstatement of the objects for which the debentures were issued was a material misstatement of fact, influencing the conduct of the Plaintiff, and rendered the directors liable to an action for deceit, although the Plaintiff was also influenced by his own mistake. *EDGINGTON v. FITZMAURICE* (No. 1)

[29 Ch. D. 459, 53 L. T. 369, 33 W. R. 911 (C.A.)]

**XII. COMPANY—REDUCTION OF CAPITAL—**

*Advertisement of Presentation of Petition—Companies Act, 1867 (30 & 31 Vict. c. 131)—Companies Act, 1877 (40 & 41 Vict. c. 26)—General Orders, March, 1868, r. 5.]* A limited company whose shares were all fully paid up, having lost part of its capital, presented a petition to reduce the nominal capital by the amount of the loss, reducing the nominal amount of each share from £1 to 12s. 6d. Bacon, V.-C., refused to hear the petition until its presentation had been advertised as prescribed by the 5th rule of the General Order of 1868, made under the Companies Act, 1867:—

*Held*, on appeal, that a petition for reduction of capital authorized by the Companies Act, 1877, ought *prima facie* to be advertised as directed by the General Order of 1868, though the Judge has a discretion to dispense with advertisements if he is satisfied that the interests of creditors cannot be affected by what is proposed, and that as in the present case the Judge in his discretion thought

**XII. COMPANY—REDUCTION OF CAPITAL—continued.**

that the petition ought to be advertised, the Court of Appeal would not interfere. *Re TAMBRA-CHERRY ESTATES COMPANY* 29 Ch. D. 683, [54 L. J. Ch. 792, 52 L. T. 712 (C.A.)]

2. — *Advertisement of Petition—Companies Act, 1867* (30 & 31 Vict. c. 131), s. 15—*Companies Act, 1877* (40 & 41 Vict. c. 26)—*G. O. March*, 1868, rr. 4, 5; *Sched. Forms* 1, 2.] Notice of the presentation of a petition under the above Acts for the reduction of the capital of a limited company must, in ordinary cases, be advertised before the hearing. *Re CONSOLIDATED TELEPHONE CO.*

[54 L. J. Ch. 795, 52 L. T. 575, 33 W. R. 408, [W. N. (1885) 42]

3. — *Advertisement—Companies Act, 1877* (40 & 41 Vict. c. 26).] Advertisement of an order, on petition, confirming a resolution for reduction of the capital of a limited company, will not, as a rule, be dispensed with. *Re CANADA NORTH-WESTERN LAND CO.* - W. N. (1885) 61

4. — *Confirmation by Court—Jurisdiction—"Capital unrepresented by available Assets"—Dispensing with Advertisements, and with use of the words "and reduced"—Companies Act, 1877, ss. 3, 4. Re LONDON AND CITY LAND AND BUILDING CO.* - W. N. (1885) 137

5. — *Use of words "and reduced" dispensed with—Companies Acts, 1867* (30 & 31 Vict. c. 131), and 1877 (40 & 41 Vict. c. 26), s. 4 (ii.).] Where a company had passed a special resolution for reduction of capital, and was about to present a petition for that purpose, the Court, on motion *ex parte*, gave leave to dispense with the words "and reduced" after the name of the company during the interval which must elapse between the presentation and hearing of the petition. *Re RIVER PLATE FRESH MEAT CO.* 52 L. T. 39, [33 W. R. 319, W. N. (1885) 14]

— Special resolution—Time—Interval.

*See COMPANY—MANAGEMENT.*

**XIII. COMPANY—SHARES** — *Fully paid-up Shares—Companies Act, 1867* (30 & 31 Vict. c. 131), s. 25—*Number of Shares*.] A contract to issue fully paid-up shares for a consideration other than money, registered under the Companies Act, 1867, s. 25, need not specify the numbers of the shares. *Re parte FORDE. Re DELTA SYNDICATE, LIMITED* - 30 Ch. D. 153, 54 L. J. Ch. 724, [33 W. R. 839]

2. — *"Fully paid-up" Shares—Companies Act, 1867, s. 25—Issue of Shares at a discount—Winding-up—Distribution of surplus Assets*.] Certain shares of a joint stock company were issued at the full price of £1 each. Other shares were afterwards issued at a discount of 7s. 6d. There was no contract in writing that these should be deemed fully paid-up shares under sect. 25 of the Companies Act, 1867. The company went into liquidation, and the realization of its property produced more than enough to pay all the debts and expenses, leaving a surplus distributable among the shareholders:—

*Held*, that the case came within the 25th section of the Companies Act, 1867, and that the holders of shares on which 12s. 6d. only was paid were not entitled to claim any portion of the

**XIII. COMPANY—SHARES—continued.**

surplus assets as against the fully paid-up shareholders, without first accounting for the 7s. 6d. per share, being the discount at which these shares were issued. *Ex parte STEPHENSON. Re NEWTOWNARDS GAS CO.* - 15 L. R. Ir. 51

3. — *"Fully paid-up" Shares—Non-registration of Contract—Estoppel—Companies Act, 1867, s. 25. Re VULCAN IRONWORKS CO.*

[W. N. (1885) 120]

4. — *Transfer—Transfer of Shares by Deed—Transfer in Blank—Delivery of Transfer by Transferor as his Deed—Equitable Mortgage of Shares—Notice—Priority—Maxim, "Qui prior est tempore potior est jure"—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 30—*Mode of giving Notice to Company—Notice to Secretary as an Individual*.] Where the shares of a company registered under the Companies Act, 1862, are, pursuant to the articles of association thereof, to be transferred by deed, a transfer at the time when the transferor parts with the possession and control thereof, must contain the name of the transferee and must identify the shares; and a transfer in blank, that is, a transfer, which at the time above-mentioned neither contains the name of the transferee nor identifies the shares, is void, even although the name of the transferee and the number and the numbers of the shares afterwards, but not in the presence nor by the direction of the transferor, are filled in, and he then adopts and acknowledges the transfer; for the mere adoption and acknowledgment by the transferor of the transfer after it has been filled in, it not being either in his possession or under his control at the time of the adoption and acknowledgment, do not amount to a delivery of the transfer by him as his deed.—*Hudson v. Revett* (5 Bing. 368) distinguished.—The principle established in *Dearle v. Hall* (3 Russ. 1), as to the effect of notice in determining the priorities of equitable rights, does not extend to the shares of companies registered under the Companies Act, 1862, or to companies governed by regulations having a provision similar to sect. 30 of that Act.—The Companies Act, 1862, s. 30, forbids the entry of any trust on the register of companies, and where the shares of a company either registered under that statute, or containing a regulation to the like effect with sect. 30 thereof, are equitably assigned or mortgaged more than once, the priority of the assignees or mortgagees will be determined by the priority of the assignments or mortgages, and not by the priority of the notices thereof given to the company:—*So held*, by Brett, M.R., on the ground that a notice of an equitable assignment or mortgage, in order to be effectual, must turn the person to whom it is addressed, into a trustee, and the Companies Act, 1862, s. 30, and any regulation of a company of a like nature, not only forbid the entry of any trust on the register, but also exempt the company from any liability for acting in contravention of a notice of the equitable assignment or mortgage:—By Cotton, L.J., on the ground that although the directors may be personally liable for permitting a transfer to be registered in contravention of equitable rights of which they have actual notice, nevertheless the company itself is not

**XIII. COMPANY—SHARES—continued.**

bound to recognise trusts, and cannot be made liable for accepting a transfer by any notice not to allow it:—By Lindley, L.J., on the ground that although the directors may be personally liable if they allow a transfer to be registered which they know to be fraudulent, nevertheless the only right of an equitable assignee or mortgagee against the company is to apply to the High Court under 5 Vict. c. 5, s. 4, and Rules of the Supreme Court, 1883, O. XLVI., for an order restraining the company from allowing a transfer to be made in contravention of his rights, and the company itself is not bound to take notice of equitable interests in shares not followed up in a reasonable time by proceedings to restrain a transfer.—*Semble*, by Brett, M.R., that the directors and secretary of the company will not be personally liable for disregarding a notice of a trust as to shares and for allowing them to be transferred in contravention thereof.—*Martin v. Sedgwick* (9 Beav. 333) dissented from.—*Ex parte Littledale, In re Pearse* (6 De G. M. & G. 714); *Ex parte Stewart, In re Shelley* (4 De G. J. & S. 543); *Ex parte Boulton, In re Sketchley* (1 De G. & J. 163); *Ex parte Union Bank of Manchester, In re Jackson* (L. R. 12 Eq. 354); and *Ex parte Agra Bank, In re Worcester* (L. R. 3 Ch. 555) discussed.—In order that a notice to a company may be effectual, either it must be given to the company itself through its proper officers, or it must be received by the company in the course of the transaction of its business: casual knowledge acquired by the secretary as an individual and not whilst he is engaged in transacting the business of the company, cannot be deemed notice to the company.—In March, 1881, M. deposited with S. the certificates and a blank transfer of 100 shares in a company as security for money advanced. In February, 1882, S. died, and the secretary of the company, who was a relative of S., attended his funeral, and during a discussion of the deceased's affairs became acquainted with the existence of the charge on the shares. In December, 1882, M. was heavily in debt to the Plaintiffs, and as they pressed him for payment, he fraudulently delivered to them another blank transfer of the same shares. Some days afterwards, the transfer to the Plaintiffs was in the absence of M. filled up with the name of the Plaintiff C. as transferee and with the numbers of the shares. The company refused to register the transfer to the Plaintiffs on the ground that the certificates were not produced, and thereupon M. offered to indemnify the company against any other claim, but shortly after the executors of S. gave notice to the company of the existence of the charge in favour of their testator. The company was registered under the Companies Act, 1862, and one of the articles of association provided that the shares should be transferred by deed, and another provided that the company should not be bound by or recognise any equitable interest. In an action by the Plaintiffs against the executors of S. to obtain a declaration of their title to the 100 shares:—*Held*, first, that the knowledge acquired by the secretary of the company at the funeral of S. of the existence of the charge in his favour could not be deemed notice of its existence to the company itself:—*Held*,

**XIII. COMPANY—SHARES—continued.**

secondly, that the offer of M. to indemnify the company could not be deemed to be a delivery of the transfer as his deed, after it had been filled in with the name of C. as transferee and with the numbers of the 100 shares, and that the shares had not been legally transferred to the Plaintiffs who had only an equitable mortgage:—*Held*, thirdly, that the notice by the Plaintiffs to the company of the charge existing in their favour was notice of a trust, and therefore was invalid, and that the charge in favour of S. being prior in point of time, his executors had the better title in equity to the shares. *SOCIÉTÉ GÉNÉRALE DE PARIS v. TRAMWAYS UNION CO.* 14 Q. B. D. 424, [54 L. J. Q. B. 177, 52 L. T. 912 (C.A.)] (Affirmed by H. L., W. N. (1885) 222.)

5. — *Transfer—Shareholder indebted to Company—Liquidation of Shareholder—Trustee in Liquidation, Refusal of Company to register.* By the articles of association of a company it was provided that the directors might refuse to register a transfer of shares while the shareholder making the same was indebted to the company, or if they should consider the transferee an irresponsible person. It was also provided that persons becoming entitled to shares in consequence of the death, insolvency, or bankruptcy of a shareholder might be registered on the production of such evidence as might from time to time be required by the directors, and that any transfer or pretended transfer of shares not being approved by the directors should be absolutely void.

A holder of shares in the company executed transfers of such shares to the nominees of a bank as a security for advances. The company refused to register these transfers, on the ground that the transferor was indebted to the company. Subsequently, the transferor having filed a liquidation petition, a trustee in liquidation was duly appointed. Such trustee, with the consent of the bank and their nominees, applied to the directors of the company to be registered as the owner of the shares, but they refused the application. The bank, though consenting to the trustee's registration, had never waived their security:

*Held*, by the Earl of Selborne, L.C., Brett, M.R., and Cotton, L.J., reversing the decision of Bacon, V.C. (26 Ch. D. 522, 53 L. J. Ch. 1152, 51 L. T. 324, 32 W. R. 1011, 1884 Dig. col. 104), that the declining to register the transfers by the directors was not a disapproval of them so as to render them void within the meaning of the articles, that the trustee was not entitled to the shares within the meaning of the articles so long as the transfers remained in force, and that the trustee was not entitled to be registered, notwithstanding the consent of the transferees. *Ex parte HARRISON. Re CANNOCK AND RUGELEY COLLIERY CO.* [28 Ch. D. 363, 54 L. J. Ch. 554, 53 L. T. 189 (C.A.)]

6. — *Transfer—Unregistered—Laches of Company—Winding-up—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 35.] M., the registered holder of certain shares in a bank, executed in Feb. 1883, a deed of transfer, leaving the name of the transferee blank, and handed the transfer and the share certificate to a purchaser for value. Afterwards the transfer and certificate came into the possession of W., who, in Feb. 1884, filled in



**XIII. COMPANY—SHARES—continued.**

his own name as transferee, and sent the complete transfer and the certificate to the office of the company, requesting that the shares might be registered in his name and a new certificate issued. M. never took any steps to get the transfer registered. Through the company's default the transfer never was registered.

In April, 1884, a winding-up order was made. M. now applied to have W.'s name substituted for his as the owner of the shares:—

*Held*, by Pearson, J., that he was entitled to the order asked for. *Re MANCHESTER AND OLD-HAM BANK* 54 L. J. Ch. 926, W. N. (1885) 169

7. — *Transfer to Trustee for Company—Company subsequently found disentitled to hold Shares—Delay.* Certain shareholders in a company registered under the Companies Acts, 1862 and 1867, on 15th Oct. 1878, sold their shares to A., the managing director of the company, as he alleged, in trust for the company. On the 6th Nov., 1878, the directors by minute approved “of the transfers to the managing director for behoof of the company,” and the names of the sellers were removed from the register, and the name of the company alone was registered, and entered upon the list of shareholders. Six years afterwards, the directors having been advised that the company was not entitled to hold its own shares, the names of the original holders of the shares were replaced upon the register:—*Held*, in a petition at the instance of the sellers for rectification, that the directors having in Nov., 1878, approved of the transfer to A. for behoof of the company, the names of the petitioners had then been properly removed from the register, and the company was not entitled to replace them, and that they now fell to be struck off. *GARDINER v. VICTORIA ESTATES CO.*

[12 C. of S. Cas. 1356 (Sc.)]

— Bankrupt's—Whether in his “order and disposition.”

*See* BANKRUPTCY—ORDER AND DISPOSITION. 1, 2.

— Contract to take.

*See* COMPANY—CONTRIBUTORY. 1—3.

— Held on trust—Payment to registered owner without notice of trust.

*See* BUILDING SOCIETY. 10.

— Lien of company on—Deposit of share certificates.

*See* MORTGAGE—PRIORITY. 1.

— Preference and ordinary—Special resolutions altering appropriation of revenue.

*See* COMPANY—MEMORANDUM. 3.

— Qualification—Directors provided by promoter.

*See* COMPANY—DIRECTORS. 2.

— Register—Mandamus to compel company to register.

*See* MANDAMUS. 1.

— Sale of.

*See* STOCK EXCHANGE.

— Transfer—Neglect to register—Measure of damages.

*See* DAMAGES. 1.

**XIII. COMPANY—SHARES—continued.**

— Transfer—Sale by representative of beneficial owner.

*See* ADMINISTRATOR. 7.

**XIV. COMPANY—UNREGISTERED COMPANY**

— *Freehold Land Society—Association of more than Twenty Persons—Business for the Acquisition of Gain—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4.* In 1873 an association of more than twenty persons was formed for the object, as stated in its deed of settlement, of purchasing a freehold estate and reselling it in allotments to the members of the association. The deed was executed by all the members, the name of each, the number of his allotment, the total amount he was to pay, and the amount of his monthly payment to be made in respect of it, being specified in a schedule to the deed. The property was vested in trustees, and its management was vested in a president, vice-president, treasurer, secretary, and a committee. The deed contained provisions for the conveyance to the members of their allotments when they had paid up the whole amount payable in respect of them, and for forfeiture and sale of the allotments of defaulting members. Powers were given to the committee to make roads, drains, &c., on the land, and powers were given to the trustees of borrowing money on mortgage with the consent of a general meeting. When all mortgages had been paid off and all the allotments had been conveyed the society was to come to an end. The society was not registered under the Companies Act, 1862:—

*Held*, that the society was not an association formed for the purpose of carrying on any business that had for its object the acquisition of gain, and was not made illegal by the Companies Act, 1862, s. 4.

*Crowther v. Thorley* (50 L. T. 43, 32 W. R. 330, 48 J. P. 292) followed.

*Wigfield v. Potter* (45 L. T. (N.S.) 612, 46 J. P. 485) approved. *Re SIDDALL (A PERSON OF UNSOUND MIND)* — 29 Ch. D. 1, 54 L. J. Ch. 682, [52 L. T. 114, 33 W. R. 509 (C.A.)]

2. — *Loan Society of less than twenty Members—Borrowing Member—Subsequent Increase of Members—Registration—Acquiescence—Bankruptcy of Borrowing Member—Proof for Loan—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4.* An unregistered money club, which in its inception comprises less than twenty members, becomes an illegal association within s. 4 of the Companies Act, 1862, so soon as it comprises upwards of twenty members. Such a society is none the less within the mischief of the Act because its business is carried on and managed by a committee of seven members as the agents of the society, although they may have full powers as to management and may make by-laws.—*Crowther v. Thorley* (50 L. T. 43, 32 W. R. 330, 48 J. P. 292) distinguished.—In 1881 seven persons formed a loan society, and when business was commenced their members had increased to twenty. In June, 1883, the society was registered under the Companies Act, 1862, with the knowledge and consent of all the members. In 1881 the society advanced £100 to a borrowing member, repayable by monthly instalments, and he duly paid the instalments as they fell due until December, 1883,

**XIV. COMPANY—UNREGISTERED COMPANY**  
—continued.

when he became bankrupt:—*Held*, by Cave, J., that under the circumstances the inference was, that all the members had, either expressly or by acquiescence, mutually agreed that all the transactions of the society previous to its registration should continue to be binding on the registered society; and, consequently, that the registered society could prove for the balance of the loan. *Ex parte* POPPLETON. *Re* THOMAS 14 Q. B. D. 379, 54 L. J. Q. B. 336, 51 L. T. 602, 33 W. R. 583

**XV.—COMPANY—VOLUNTARY WINDING-UP**  
—Action by Liquidator in name of Company—Counter-claim—Motion to strike out Counter-claim. LION LIFE ASSURANCE CO. v. ATKINSON

[W. N. (1885) 54, 78]

2. — Application by Contributory—Summons at Chambers—Direction of the Judge—Companies Act, 1862, s. 138—G. O., Nov., 1862, r. 51. *Re* BRITISH ENVELOPE MANUFACTURING CO.

[W. N. (1885) 84]

3. — General Meeting — Poll — Mode of taking Poll—Chairman, Direction of—Companies Act, 1862, Table A, Art. 43.] The articles of association of a company provided (in the terms of Art. 43 of Table A. to the Companies Act, 1862) that if at any general meeting of the company a poll should be demanded it should be taken "in such manner as the chairman shall direct."

A poll having been demanded at a meeting summoned to consider a resolution for a voluntary winding-up, the chairman directed the poll to be taken then and there. It was so taken, and the resolution was carried:—*Held*, by Kay, J., that the poll had been rightly taken.

*Reg. v. D'Oyly* (12 Ad. & E. 139) followed.

Observations on the dicta of Jessel, M.R., and Brett, L.J., in *In re Horbury Bridge Coal, Iron, and Waggon Company* (11 Ch. D. 109, 114; 48 L. J. Ch. 341, 40 L. T. 353, 354). *Ex parte* MANSELL. *Re* CHILLINGTON IRON COMPANY

[29 Ch. D. 159, 54 L. J. Ch. 624, 52 L. T. 504,

[33 W. R. 442]

4. — General Meeting — Voting — Special Resolutions—Proxies—Poll—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 51.] Where by the articles of association of a company voting by proxy is allowed, proxies cannot, at a general meeting, be used upon a show of hands, but a poll must first be taken. *Re* CALORIC ENGINE AND SIREN FOG SIGNALS CO. - 52 L. T. 846

5. — Liabilities of Company under Lease—Provision for, out of Assets—Companies Act, 1862, ss. 133, 158. *GOOCH v. LONDON BANKING ASSOCIATION* - - - W. N. (1885) 164

6. — Supervision Order — Injunction restraining Scotch Action—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 87, 122, 151.] Where an order for winding up a company under supervision had been made, the Court, on an *ex parte* application, restrained actions pending in Scotland against the company. *Re* MIDDLESBOROUGH FIRE BRICK CO. - 52 L. T. 98, 33 W. R. 339,

[W. N. (1885) 7]

7. — Supervision Order—Costs—Action by Landlord—Leave of Court—Companies Act, 1862, s. 138.] Pending the winding-up of a company

**XV. COMPANY—VOLUNTARY WINDING-UP—**  
—continued.

voluntarily under the supervision of the Court, the landlord of premises held by the company, without leave of the Court, brought an action to recover possession, and obtained judgment:—

*Held*, that the landlord was entitled to be paid his costs in full, in priority to the general creditors of the company, but not to an order for immediate payment. *Ex parte* CLITHEROE. *Re* NATIONAL BUILDING AND LAND INVESTMENT CO.

[15 L. R. Ir. 47]

8. — Supervision Order—Petition for—Appearance by Company as well as Liquidator—Costs.] Where, after a voluntary winding-up is begun, a petition is presented for continuance of the winding-up under supervision, the company ought to appear by the liquidator, and the costs of a separate appearance will not be allowed. *Re* A. W. HALL & Co. 34 W. R. 56, W. N.

[(1885) 190]

— Mutual loan society — Withdrawal of members.

See COMPANY—MEMORANDUM. 1,

**XVI. COMPANY — WINDING-UP — Costs — Creditor's Petition—Dismissal of Petition on Application of Petitioner—Shareholders and Creditors appearing to consent.]** Where a winding-up petition is dismissed on the application of the petitioner, shareholders and creditors appearing either to oppose or support the petition are entitled to their costs. *Re Jablochkoff Electric Light and Power Co.* (49 L. T. 566, 32 W. R. 168, W. N. 1883, p. 189) distinguished. *Re NACUPAI GOLD MINING CO.* - 28 Ch. D. 65, 54 L. J. Ch. 109,

[51 L. T. 900, 33 W. R. 117]

2. — Costs—Liquidator.] Costs of successful claims in a winding-up were not given against the liquidator personally, but out of the assets. *Re MARSEILLES EXTENSION RAILWAY & LAND CO.* SMALLPAGE'S & BRANDON'S CASES

[30 Ch. D. 598]

3. — Costs—Dismissal of Petition.] When a winding-up petition is dismissed, the Court will not, even if it thinks the petition was a *bonâ fide* one, give the petitioner costs. The most that will be done is to dismiss the petition without costs. *Re TYNESIDE PERMANENT BENEFIT BUILDING SOCIETY* - W. N. (1885) 148

4. — Evidence — Depositions — Directors' Misfeasance—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 115, 165.] Depositions taken under s. 115 of the above Act, by the liquidator of a company which is being wound up, are not admissible in evidence against persons in whose absence they have been taken, even though such persons have obtained an order requiring the liquidator to specify the depositions or parts of depositions on which he intends to rely against them, and he has accordingly specified the depositions which he desires to use. *Re GREAT WESTERN FOREST OF DEAN COAL CONSUMERS' CO.* CRAWSHAY'S & CARTER'S CASE 54 L. J.

[Ch. 506, 33 W. R. 444, W. N. (1885) 37]

5. — Examination of former Officer under Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115—General Order of the 11th of November, 1862, Rule LX.—Leave to Creditor to attend "the Proceedings"—Right of Creditor to be present.] A

**XVI. COMPANY—WINDING-UP—continued.**

person who had brought in a large claim as creditor to a company which was being wound up, obtained an order giving him liberty "to attend the proceedings in this matter at his own expense." The liquidator afterwards took out a summons under sect. 115 for the examination of a former officer of the company, with a view to obtaining information as to the circumstances under which the claim of the alleged creditor arose. The alleged creditor claimed a right to be present at the examination:—*Held* (affirming the decision of Bacon, V.C.), that he ought not to be allowed to be present at the examination. *Re NORWICH EQUITABLE FIRE INSURANCE COMPANY*

[27 Ch. D. 515, 54 L. J. Ch. 254, 51 L. T. 404,  
[32 W. R. 818, 964 (C.A.)]

6. — *Examination of Officer—Pending action against him—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115.* An officer of a company in liquidation may not refuse to be examined under the above section on the ground that an action is pending against him, whether such action was begun before or after the winding-up.

The official liquidator may properly apply s. 115 for the purpose of ascertaining whether proceedings should be continued or not against an officer of the company, or against any other person. *Ex parte LEAVER. Re METROPOLITAN (BRUSH) ELECTRIC LIGHT & POWER CO.*

[51 L. T. 817]

7. — *Examination—Production of Books—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 115—G. O., Nov. 1862, Sched. 3, Form 54.* Where an examiner has been appointed in the liquidation of a company, the proper mode of obtaining the production before the examiner of any books or documents relating to the company, in the custody or power of any officer or person, under the 115th section of the above Act, is not by subpoena but by summons, according to the above form.

*Re English Joint Stock Bank* (L. R. 3 Eq. 203, 209; 15 L. T. 206) considered. *CREDIT CO. v. WEBSTER* — — — 53 L. T. 419

8. — *Foreign Court—Order by, for winding up of English Company with foreign Property and Business—Supervision Order in England—Power of Attorney given by English Liquidator to Foreign Liquidator—Reversal of Winding-up Order by Foreign Court of Appeal. Re STEEL CO. OF CANADA* — — — W. N. (1885) 79

9. — *Fraudulent Agreement—Rescission of.* B., for the purpose of enabling a company to have a fictitious credit, in case of inquiries at their bankers, placed money to their credit which they were to hold in trust for him. Some of the money having been drawn out with B.'s consent, and the company having been ordered to be wound up while a balance remained:—*Held* (affirming the decision of Bacon, V.C.), that B. could not claim to have the balance paid to him. *Re GREAT BERLIN STEAMBOAT COMPANY* [28 Ch. D. 616, 54 L. J. Ch. 68, 51 L. T. 445 (C.A.)]

10. — *Jurisdiction—Foreign Company—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 199.* There is no jurisdiction under the Companies Act, 1862, to wind up a foreign company which

**XVI. COMPANY—WINDING-UP—continued.**

has carried on business in England by means of agents, but which has no branch office of its own there. *Re LLOYD GENERALE ITALIANO*

[29 Ch. D. 219, 54 L. J. Ch. 748, 33 W. R. 728]

11. — *Petition—Advertisements—Withdrawal—Contributories—Costs—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 82—Rules of November, 1862, r. 2.* A winding-up petition had appeared in the Court paper from time to time which had never been advertised:—

*Held*, by Pearson, J., that the petition could be withdrawn without payment of the costs of a shareholder appearing to oppose. *Ex parte PHILP & KIDD. Re UNITED STOCK EXCHANGE, LIMITED*

[28 Ch. D. 183, 54 L. J. Ch. 310, 52 L. T. 509,  
[33 W. R. 389]

12. — *Petition by Judgment Creditor—Collusion—Evidence of—Discretion of Court.* Where upon the hearing of a winding-up petition presented by a judgment creditor, evidence is before the Court upon which the issue of whether the judgment was or was not obtained by collusion can be decided, the petition will be forthwith disposed of, notwithstanding that the judgment has not been impeached in an action at law.

*Bowes v. Hope Mutual Insurance Society* (11 H. L. Cas. 389, 12 L. T. 680) distinguished. *Re UNITED STOCK EXCHANGE CO.* — 51 L. T. 687,  
[W. N. (1884) 251]

13. — *Priority of Crown—Companies Act, 1862 (25 & 26 Vict. c. 89)—Judicature Act, 1875, s. 10—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 30, 40, 150.* The provisions of the Bankruptcy Act, 1883, which take away the priority of the Crown over other creditors in the distribution of assets in bankruptcy, have not, by virtue of the assimilating provisions contained in the Judicature Act, 1875, s. 10, been incorporated into the Companies Act, 1862, so as to bar the prerogative right of the Crown to issue process and thus to obtain payment in full, in priority over other creditors, in respect of a debt due from a company in course of liquidation under the Companies Act. *Re ORIENTAL BANK CORPORATION* (No. 2) 28 Ch. D. 643, 54 L. J. Ch. 327,  
[52 L. T. 170]

14. — *Proof—Notice—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 84, 153.* In consideration of moneys paid in at a distant foreign branch of a banking company whose head office was in London, drafts on the head office were given after presentation of a petition to wind up the company, and appointment of a provisional liquidator in England, but before (from want of direct telegraphic communication) any notice of the stoppage of the bank in London had been received at the foreign branch, and before the date of the winding-up order:—

*Held*, by Chitty, J., that the contract which was entered into by the officers of the foreign branch on behalf of the company without any notice of the winding-up proceedings, and therefore before revocation of their authority, was not invalidated by the Companies Act, 1862, s. 153; and accordingly that the creditors in respect of such transaction were not entitled to have their money refunded, as on the footing of a void transaction, but merely to prove for the amount

**XVI. COMPANY—WINDING-UP—continued.**

under the winding-up *pari passu* with the other creditors.

As between the holders for value of the drafts and the persons by whom the consideration was paid, the holders were held entitled to prove. *Ex parte* GUILLEMIN. *Re* ORIENTAL BANK CORPORATION - 28 Ch. D. 634, 54 L. J. Ch. 322, [52 L. T. 167]

15. — *Royal Charter—Jurisdiction—7 Will. 4 & 1 Vict. c. 73—7 & 8 Vict. c. 110—7 & 8 Vict. c. 111—7 & 8 Vict. c. 113—11 & 12 Vict. c. 45—12 & 13 Vict. c. 108—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 199.* Under the Companies Act, 1862, the Court has jurisdiction to wind up a company incorporated by Royal Charter.

In the charter of a company incorporated by Royal Charter in 1851 there was a provision that "on the winding-up of the affairs of the corporation, all and every the proprietors for the time being of any interest or shares in the capital thereof shall be liable to contribute to the payment of the debts and liabilities of the corporation" to the extent therein mentioned. The charter also contained provisions for winding up the corporation in the event of a loss of a certain amount of the capital, or in the event of the charter being revoked. At the date of the grant of the charter, companies so incorporated could be wound up under statutory powers:—

*Held*, that the expression "winding up of the affairs of the corporation" applied to a winding-up under the statutory powers for the time being in force. *Ex parte* CLAYTON & HARTAS. *Re* ORIENTAL BANK CORPORATION 54 L. J. Ch. 481, [52 L. T. 556 (C.A.)]

16. — *Set-off—Unlimited Company—Payment by Director—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 101.* B., one of the directors of an unlimited company, joined with co-directors in a promissory note for £5000 to a bank, to secure repayment of an overdraft by the company with the bank. After a call had been made in the winding-up, B. paid £500 as a contribution in respect of the note:—*Held*, by Bacon, V.C., that B. was not entitled to set off the £500 against a sum of £875 due from him as a contributory for calls. *Re* NORWICH EQUITABLE FIRE ASSURANCE COMPANY. *BRAUNETT'S CASE* (No. 1) 54 L. J. Ch. [227, 51 L. T. 318, 32 W. R. 1010, W. N. (1884), 175 (Affirmed by C.A., 53 L. T. 569, W. N. (1885) 156.)]

17. — *Set-off—Running Contract—Charge on Moneys payable under the Contract—Salvage Money—Moneys payable under concurrent Contracts—Notice—Mutual Credit—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 39.* By the terms of a contract between the Commissioners of Sewers and a wood paving company, the company were to pave a particular street called Victoria Street, and the Commissioners were to pay 60 per cent. of the moneys due a month after the engineer certified the works to be complete; 30 per cent. within three months afterwards; and 10 per cent. at the expiration of two years. During the two years the company were to keep the wood surface of the roadway in repair, and if, before the expiration of the two years, the Commissioners should give them notice, the company were also to keep the roadway in repair for fifteen years

**XVI. COMPANY—WINDING-UP—continued.**

upon being paid for the same at the annual rate of 6d. per square yard. The Commissioners were to be at liberty to retain from time to time "out of any money payable by them to the contractors," an amount equal to the above annual charge, by way of security; and in the event of failure by the company to perform the contract, the moneys retained were to be forfeited, and to be held by the Commissioners as liquidated damages for the default: and it was provided that whenever "according to the terms of this contract," any money should be due from the company to the Commissioners for damages or otherwise, the Commissioners might either sue for such money or deduct or set off the same against any money due from them to the company.

The contract being dated on the 22nd of September, 1882, the company on the 15th of November, 1882, gave to L. and C., timber merchants, a charge on all their interest in the contract to secure a debt for goods sold and delivered; and on the 9th of December, 1882, notice of this charge was given to the Commissioners.

On the same 9th of December, 1882, but after the notice, the company presented a petition for a winding-up order, and on the 12th and 16th of December the provisional official liquidator was empowered and ordered to complete the contract and to obtain the necessary timber on security of the moneys to be received subject to L. and C.'s charge. On the 13th of January, 1883, the winding-up order was made: on the 29th of January the liquidator, having completed the work, sent in a claim to the Commissioners, and on the 8th of March, 1883, the engineer certified the work to be complete. On the 19th of March, 1883, the Commissioners sent to the liquidator a claim of set-off for anticipated loss by breach of the contract to repair for fifteen years, the amount of such claim being estimated by the difference between 1s. a square yard, which the Commissioners considered they would have to pay for the repairs, and the 6d. a square yard provided for by the agreement. They also claimed to set off damages accrued and anticipated under other contracts for paving other streets. Except as to a trifling sum, it was not alleged that any cause of action for breach of any of these contracts accrued before the 27th of January, 1883. On the 25th of May, 1883, the Commissioners served the company (in liquidation) with formal notice to repair for fifteen years from the 8th of March, 1885:—

*Held*, that the liquidator was not entitled to a first charge on the moneys payable under the contract for the cost of completing the work incurred by him since the winding-up.

Decision of Bacon, V.C. (26 Ch. D. 624, 51 L. T. 321, 32 W. R. 915, 1884 Dig., col. 114), reversed.

*Held*, further, that the chargees, L. and C., were entitled to a charge on 90 per cent. of the moneys payable under the contract (subject as above) undiminished by any retainer or set-off by the Commissioners either under the Victoria Street contract or otherwise.

Decision of Bacon, V.C., affirmed.

*Held*, further, that the Commissioners might

**XVI. COMPANY—WINDING-UP—continued.**

prove for their cross claim under the contract of the 22nd of September, 1882.

Decision of Bacon, V.C., affirmed.

*Held*, further, that the Commissioners were not entitled to retain any moneys due under the contract of the 22nd of September, 1882, in respect of moneys due under any of the concurrent contracts.

Decision of Bacon, V.C., affirmed. *Re ASPHALTIC WOOD PAVEMENT COMPANY. LEE & CHAPMAN'S CASE* 30 Ch. D. 216, 54 L. J. Ch. [460, 53 L. T. 65, 33 W. R. 513 (C.A.)]

- Building society.  
*See BUILDING SOCIETY.*
- Contributory in.  
*See COMPANY—CONTRIBUTORY.*
- Liquidator.  
*See COMPANY—LIQUIDATOR.*
- Railway—Abandonment—Deposit.  
*See RAILWAY COMPANY. 2.*
- Set-off—Unliquidated damages.  
*See CONTRACT. 6.*
- Solicitor opposing petition—Charge for costs.  
*See SOLICITOR—LIEN. 3.*
- Surplus assets—Distribution of.  
*See COMPANY—SHARES. 2.*
- Voluntary winding-up.  
*See COMPANY—VOLUNTARY WINDING-UP.*

**COMPANY—Bill of sale by.**

*See BILL OF SALE—REGISTRATION. 2.*

- Books of—Solicitor's lien on, for costs.  
*See SOLICITOR—LIEN. 6.*
- Borrowing powers—Ultra vires.  
*See CORPORATION.*
- Railway company.  
*See RAILWAY COMPANY.*

**COMPENSATION—Artizans' Dwellings Act.**

*See ARTIZANS' DWELLINGS ACT.*

- Disclaimer of lease—Landlord's claim for compensation.  
*See BANKRUPTCY—DISCLAIMER. 4.*
- Improvements by tenant—Compensation.  
*See LANDLORD AND TENANT—IMPROVEMENTS.*
- Lands Clauses Act.  
*See LANDS CLAUSES ACT.*
- Public Health Act.  
*See PUBLIC HEALTH ACTS. 1, 9.*
- Railway Clauses Act.  
*See RAILWAY COMPANY. 11.*
- Sale of realty.  
*See VENDOR AND PURCHASER—COMPENSATION.*

**COMPOSITION.**

*See BANKRUPTCY—COMPOSITION.*

**COMPULSORY PURCHASE—Artizans' Dwellings Act.**

*See ARTIZANS' DWELLINGS ACT.*

- Lands Clauses Act.  
*See LANDS CLAUSES ACT.*
- Metropolitan Paving Act—Severance.  
*See METROPOLIS. 14.*

**CONDITION—Application for shares.**

*See COMPANY—CONTRIBUTORY.*

— Gift by will subject to.

*See WILL—CONDITION.*

**CONDITIONS OF SALE.**

*See VENDOR AND PURCHASER—CONDITIONS OF SALE.*

**CONDONATION—Of adultery by wife.**

*See HUSBAND AND WIFE—DIVORCE. 1, 2.*

**CONFESSION—Prisoner.**

*See CRIMINAL LAW. 3—5.*

**CONFLICT OF LAW—Bill of exchange—Foreign indorsement.**

*See BILL OF EXCHANGE. 2.*

— Scotch testator—Estate of—Jurisdiction.

*See SCOTCH LAW. 2.*

**CONSENT—Order by—Withdrawal of consent—Surprise or mistake.**

*See PRACTICE—JUDGMENT. 2.*

**CONSIDERATION—Bill of Sale—Statement of consideration.**

*See BILL OF SALE—FORMALITIES. 6.*

— Contract.

*See CONTRACT.*

— Contract to take less than sum due.

*See ACCORD AND SATISFACTION.*

**CONSOLIDATION—Mortgages.**

*See MORTGAGE—PRIORITY. 12.*

**CONSPIRACY**—Combination to effect an unlawful Object—*Interlocutory Injunction—Irreparable Damage.*] A confederation or conspiracy by an associated body of ship-owners which is calculated to have and has the effect of driving the ships of other merchants or owners, and those of the Plaintiffs in particular, out of a certain line of trade—even though the immediate and avowed object be, not to injure the Plaintiffs, but to secure to the conspirators themselves a monopoly of the carrying trade between certain foreign ports and this country—is, or may be, an indictable offence, and therefore actionable, if private and particular damage can be shewn.—To warrant the Court, however, in granting an interim or interlocutory injunction to restrain the parties from continuing to pursue the objectionable course, those who complain must at least shew that they have sustained or will sustain "irreparable damage"—that is, damage for which they cannot obtain adequate compensation without the special interference of the Court. So *held*, by Coleridge, C.J., and Fry, L.J. *MOGUL STEAMSHIP Co. v. M'GREGOR, GOW, & Co.* 15 Q. B. D. 476, 54 L. J. Q. B. 540, 53 L. T. [268, 49 J. P. 646]

**CONSTABLE—Action against—Notice of—Venue.**

*See CONTAGIOUS DISEASES ACT. 1.*

**CONSTRUCTION—Bill of lading.**

*See SHIP—BILL OF LADING.*

— Charterparty.

*See SHIP—CHARTERPARTY.*

— Contract.

*See CONTRACT.*

— Covenant.

*See COVENANT.*

**CONSTRUCTION—continued.**

— Insurance policy.

See INSURANCE.

— Power of attorney.

See POWER OF ATTORNEY.

— Settlement.

See SETTLEMENT—CONSTRUCTION.

— Will.

See WILL.

— Refusing to administer oath—Affidavit.

See PRACTICE—EVIDENCE. 1.

**CONTAGIOUS DISEASES (ANIMALS) ACT, 1878**

— *Action against Constable—Notice of Action—Trial in County, where Fact committed*—1 & 2 Wm. 4, c. 41, ss. 5, 19—2 & 3 Vict. c. 93, s. 8—*Contagious Diseases (Animals) Act, 1878* (41 & 42 Vict. c. 74), s. 50.] An officer of police, appointed under 2 & 3 Vict. c. 93, s. 8, who is sued for anything done in intended pursuance of the duties imposed and powers conferred upon him by the Contagious Diseases (Animals) Act, 1878, s. 50, is not entitled by virtue of 1 & 2 Wm. 4, c. 41, ss. 5, 19, to notice of action and to have the action tried in the county where the alleged grievance has been committed; for, although 2 & 3 Vict. c. 93, s. 8, incorporates 1 & 2 Wm. 4, c. 41, nevertheless the protection afforded by s. 19 of the last-named statute extends by force of s. 5 only to those cases, where a constable appointed under it is intending to act with the power and authority given to a constable by the common law or by some statute existing when 1 & 2 Wm. 4, c. 41, was passed. *BRYSON v. RUSSELL*

[14 Q. B. D. 720, 54 L. J. Q. B. 144, 52 L. T. 208, 33 W. R. 34, 49 J. P. 293 (C.A.)]

2. — *Movement of Animals into infected District—Declaration and Licence—Carriers*—41 & 42 Vict. c. 74.] By an order in Council made under the above Act, it was ordered that any local authority might make regulations for prohibiting or regulating the movement of animals into their district, provided that such regulations should not restrict movement of animals by railway through such district, and that if an animal were moved in contravention of the order, or of a regulation of a local authority thereunder, the owner of the animal, the person in charge of it, the person causing the movement, and the person conveying the animal, should be deemed guilty of an offence against the Act. A local authority made a regulation that "no animal may be moved" into the G. district except fat animals for immediate slaughter, which might be moved subject to the following regulation: "Before any movement into the county district, or removal from the railway truck into the county district, takes place, the owner, consignee, or person in charge, shall deliver to the inspector of the local authority a declaration under the Act."

W. having tendered fat animals to the G. W. Ry. Co. for carriage into the G. district, the G. W. Ry. Co. refused to carry them unless furnished by W. with a "declaration under the Act." In an action by W. against the Co. for damages for breach of duty: *Held*, by Grove, J., and Huddleston, B., that, notwithstanding the words "or before removal from the railway truck

**CONTAGIOUS DISEASES (ANIMALS) ACT, 1878**

—continued.

in the county district takes place," the defendant Co. were entitled to refuse to carry the cattle without a declaration, and committed no breach of duty in refusing to do so. *WILLIAMS v. GREAT WESTERN RAILWAY CO.* 52 L. T. 250, 49 J. P. 439

— **CONTEMPT OF COURT**—Acting as solicitor.

See SOLICITOR—UNQUALIFIED.

— Practice.

See PRACTICE—ATTACHMENT OF PERSON.

— Warrant—Notice—Telegram.

See PRACTICE—ADMIRALTY. 18.

**CONTRACT**—*Consideration—Statute of Frauds, s. 4.*] A verbally promised to give £20,000 to the Jubilee fund of the Congregational Union, and also filled up and signed a blank form of promise, not addressed to anyone, but headed "Congregational Union of England and Wales—Jubilee Fund," whereby he promised to give £20,000 in five equal annual instalments of £4000 each, for liquidation of chapel debts. He paid £12,000 to the fund within three years after giving the promise, and then died, leaving the last two instalments unpaid and unprovided for. The Congregational Union claimed the £8000 from A.'s executors, alleging that they had been led by A.'s promise to contribute larger sums to churches than they would otherwise have done, that money had been given and promised by other persons in consequence of A.'s promises, that grants from the Jubilee Fund had been promised to cases recommended by A., and that churches to which promises had been made by the committee, and the committee themselves, had incurred liabilities in consequence of A.'s promise.

*Held*, by Pearson, J., that there was no enforceable contract, on the grounds, first, that there was no consideration; secondly, that there was no sufficient memorandum in writing to satisfy the Statute of Frauds. *Re HUDSON. CREED v. HENDERSON.* 54 L. J. Ch. 811, 33 W. R. 819, [W. N. (1885) 100]

2. — *Construction—Mistake—Memorandum of Agreement—"His share" equivalent to Share of Firm.*] Case in which it was held, that according to the true construction, having regard to all the circumstances of the case, of a memorandum of mutual agreement between M., the Plaintiffs, and three other firms, whereby M. agreed to surrender to the Plaintiffs "his share" in a certain mortgage held by him as trustee, the share of M.'s firm therein passed, and not merely his own individual share as between himself and his partner. *MARSHAL v. MACLURE*

[10 App. Cas. 325 (P.C.)]

3. — *Offer and Acceptance—Contract from Correspondence—Consensus ad idem—Misunderstanding of Parties as to Subject-matter of Negotiation.*] A negotiation took place as to the sale by L. to P. of a British patent and certain foreign patents for the same inventions, and ultimately an offer was made for sale at £500 and accepted by letter, but it was not quite clear whether the offer and acceptance related to all the patents, or to the British patent only. P. brought his action for specific performance, treating the contract as in-

**CONTRACT—continued.**

cluding all the patents, and moved for an injunction to restrain L. from parting with them. At the hearing of the motion he asked for leave to amend his writ, and for an injunction as to the British patent only:—

*Held*, by Kay, J., that as L. had understood that he was negotiating about the British patent only, and P. that he was negotiating as to all the patents, there never was the *consensus ad idem* which is necessary to make a contract; that there was, therefore, no contract which P. could enforce, and that an injunction must be refused.

*Held*, on appeal, that an injunction should be granted, for that where a written agreement has been signed, though it is in some cases a defence to an action for specific performance according to its terms, that the Defendant did not understand it according to what the Court holds to be its true construction, the fact that the Plaintiff has put an erroneous construction upon it, and insisted that it included what it did not include, does not prevent there being a contract, nor preclude the Plaintiff from waiving the question of construction and obtaining specific performance according to what the Defendant admits to be its true construction. *PRESTON v. LUCK* 27 Ch. D. 497, [33 W. R. 317 (C.A.)]

**4. — Offer and Acceptance—Consideration.]**

A. was a judgment creditor of C. B. wrote to A. a letter in the following terms (so far as is material):—"If C. leaves in your hands the order of Messrs. F., drawn upon Messrs. R., for 250 8 per cent. preference shares, &c., I will obtain, within one month from this date, with the sanction of C., a loan for him of £1000 upon said order and pay that sum to you against the delivery of said order." C. left the order in A.'s hands, and sanctioned the proposal contained in the letter. A. then wrote to B. as follows:—"C. brought me your letter on the 27th, and he has given me his written sanction to your obtaining the loan of £1000 for him referred to in that letter, and we shall be glad to hear that everything is in order."

*Held*, that, assuming A.'s letter to B. to be a final acceptance of the offer contained in B.'s letter to A., there was consideration moving from A. to support B.'s promise, such consideration being the implied undertaking on the part of A. when he received the order to keep it till required for the purpose of being handed over to the person who would advance the £1000 on its security. But *held*, also, that A.'s letter to B. was not an acceptance of the offer contained in B.'s letter to A., and that the two letters did not therefore constitute a contract. *HARSTON v. HARVEY* - - - 1 C. & E. 404

**5. — Performance — Impossibility of — Breach—Damages—Measure of.]** A shipbuilder contracted to build, to a model to be approved by the purchaser, a vessel of certain specified dimensions in length, breadth, and depth, having compounded engines of 180 N.H.P., "to carry 1800 tons dead-weight, including coals, on 14½ feet draught." There was no stipulation as to speed. The ship, actually built to the approved model, and delivered under reservation of a claim of damages, was deficient in carrying capacity to

**CONTRACT—continued.**

the extent of nearly 200 tons. In an action brought by the purchaser for damages for breach of contract, *held* that it was no defence to shew that it was impossible to build a seaworthy ship of the required dimension and carrying capacity according to the model.

*Semble*, the measure of damages was to be found in the difference between the earning power of the ship furnished and that of the ship contracted for. *GILLESPIE & Co. v. HOWDEN & Co.*

[12 C. of S. Cas. 800 (Sc.)]

**6. — Rescission or Repudiation of—Contract for Delivery of Goods by Instalments—Company, Winding-up of—Set-off of unliquidated Damages against Claim of Company in Winding-up—Counter-claim—Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10—O. XIX. r. 3.]** The Respondents bought from the Appellant company 5000 tons of steel of the company's make, to be delivered 1000 tons monthly, commencing January, 1881, payment within three days after receipt of shipping documents. In January the company delivered part only of that month's instalment, and in the beginning of February made a further delivery. On the 2nd of February, shortly before payment for these deliveries became due, a petition was presented to wind up the company. The Respondents *bonâ fide*, under the erroneous advice of their solicitor that they could not without leave of the Court safely pay pending the petition, objected to make the payments then due unless the company obtained the sanction of the Court, which they asked the company to obtain. On the 10th of February the company informed the Respondents that they should consider the refusal to pay as a breach of contract, releasing the company from any further obligations. On the 15th of February an order was made to wind up the company by the Court. A correspondence ensued between the Respondents and the liquidator, in which the Respondents claimed damages for failure to deliver the January instalment, and a right to deduct those damages from any payments then due; and said that they always had been and still were ready to accept such deliveries and make such payments as ought to be accepted and made under the contract, subject to the right of set-off. The liquidator made no further deliveries, and brought an action in the name of the company for the price of the steel delivered. The Respondents counter-claimed for damages for breaches of contract for non-delivery:—

*Held*, affirming the decision of the Court of Appeal (9 Q. B. D. 648, 51 L. J. Q. B. 576, 47 L. T. 369, 31 W. R. 80), that, upon the true construction of the contract, payment for a previous delivery was not a condition precedent to the right to claim the next delivery; that the Respondents had not, by postponing payment under erroneous advice, acted so as to shew an intention to repudiate the contract, or so as to release the company from further performance.

That s. 10 of the Judicature Act, 1875, imported into the winding-up of companies the rule as to set-off in bankruptcy; that the Respondents were entitled, after the winding-up order was made, to set off damages for non-delivery against the payments due from them, and to counter-

**CONTRACT—continued.**

claim for damages in this action. *MERSEY STEEL AND IRON CO. v. NAYLOR, BENZON, AND CO.*

[9 App. Cas. 434, 53 L. J. Q. B. 497, 51 L. T. 637, 32 W. R. 989 (H. L., E.)]

7. — *Validity—Bail in Criminal Case—Indemnity of Surety—Deposit of Money with Surety—Action to recover Money deposited.* A contract is illegal, whereby a Defendant in a criminal case, who has been ordered to find bail for his good behaviour during a specified period, deposits money with his surety upon the terms that the money is to be retained by the surety during the specified period for his own protection against the Defendant's default, and at the expiration of that period is to be returned; and no action by the Defendant in the criminal case will lie to recover back the money deposited with the surety either before or after the expiration of the specified period, although the Defendant in the criminal case has not committed any default, and although the surety has not been compelled to pay the amount for which he has become bound.—*Wilson v. Strugnell* (7 Q. B. D. 548, 50 L. J. M. C. 145, 45 L. T. 219) as to this point overruled. Decision of Stephen, J. (1 C. & E. 364), reversed. *HEIMAN (or HERMANN) v. JEUCHNER (or ZEUCHNER)* [15 Q. B. D. 561, 54 L. J. Q. B. 340, 53 L. T. 94, 33 W. R. 606, 49 J. P. 502 (C.A.)]

8. — *Validity—Broker and principal—Contract for payment of "differences" merely, and not for sale; and therefore, as a wagering contract, not enforceable at law.* *HEIMAN v. HARDIE* [12 C. of S. Cas. 406 (Sc.)]

9. — *Validity—Illegality—Wagering contracts—Broker—Contract for payment of "differences."* *IRWIN v. WILLIAR* - 110 U. S. 499

10. — *Validity—Illegality—Contract to renounce executorship.* *ELLCOTT v. CHAMBERLIN* - 48 Amer. R. 327 (U.S.)

— *Breach of—Measure of damages for.*  
See DAMAGES.

— *Building.*  
See BUILDING CONTRACT.

— *Carriage.*  
See CARRIER: RAILWAY COMPANY.

— *Consideration—Compromise of action.*  
See COMPANY—MEMORANDUM. 2.

— *Consideration—Contract to take less than sum due.*  
See ACCORD AND SATISFACTION.

— *Corporation—Not under seal.*  
See ELEMENTARY EDUCATION ACTS. 3. HIGHWAY. 1.

— *Issue of fully paid-up shares.*  
See COMPANY—SHARES. 1.

— *Married Woman's.*  
See HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS.

— *Partnership—Participation in profit and loss.*  
See PARTNERSHIP. 2.

— *Restraint of trade.*  
See RESTRAINT OF TRADE.

— *Running contract by company—Winding-up of company—Set-off.*  
See COMPANY—WINDING-UP. 17.

**CONTRACT—continued.**

— *Sale of bank shares.*

See STOCK EXCHANGE. 2, 3.

— *Sale of goods.*

See SALE OF GOODS.

— *Sale of realty.*

See VENDOR AND PURCHASER—CONTRACT.

— *Specific performance of.*

See SPECIFIC PERFORMANCE.

— *Statute of Frauds.*

See FRAUDS, STATUTE OF.

— *Tenancy—Construction—Notice to quit.*

See LANDLORD AND TENANT—MONTHLY TENANCY.

— *To take shares.*

See COMPANY—CONTRIBUTORY. 1—3.

— *With School Board—Seal—Architect.*

See ELEMENTARY EDUCATION ACTS. 3.

**CONTRIBUTION**—*Claim against third party for.*

See PRACTICE—THIRD PARTY.

— *Tenants in common—Repair of house—Action.*

See TENANTS IN COMMON.

**CONTRIBUTORY**—*Winding-up of company.*

See COMPANY—CONTRIBUTORY.

**CONTRIBUTORY NEGLIGENCE.**

See NEGLIGENCE.

**CONVERSION OF REAL AND PERSONAL ESTATE**—*Real Estate in lease with option to tenant to purchase reversion.*

See ELECTION. 1.

— *Sale—Lunacy of beneficiary.*

See PARTITION. 3.

**CONVEYANCE**—*Fraudulent—13 Eliz. c. 5.*

See FRAUDULENT CONVEYANCE.

— *On sale of real estate.*

See VENDOR AND PURCHASER—CONVEYANCE.

— *Voluntary.*

See VOLUNTARY CONVEYANCE.

**CONVEYANCING ACT**—*Long Term—Enlargement of, into Fee—"Rent having no Money Value"*

— *Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 65.] Land was demised for a term of 500 years from Michaelmas, 1646, at the yearly rent of "one silver penny, if lawfully demanded":—*

*Held, by Pearson, J., that this rent was a "rent having no money value," within the meaning of sect. 65 of the Conveyancing Act, 1881, and that the owner of the term in 1884 had power under that section to enlarge the term into a fee. Re CHAPMAN AND HOBBS - 29 Ch. D. 1007, [54 L. J. Ch. 810, 52 L. T. 805, 33 W. R. 703]*

*See also SMITH v. STOTT - 29 Ch. D. 1009, n., [48 L. T. 512, 31 W. R. 411, 1883 Dig. col. 107]*

— *Infant—Maintenance.*

See INFANT. 5, 6.

— *"Lease"—Building contract, whether a.*

See BUILDING CONTRACT. 1.

— *Married woman—Investment, unauthorized.*

See HUSBAND AND WIFE—WIFE'S PROPERTY. 3.

— *Mortgage—Receipt.*

See MORTGAGE—CONTRACT. 2.



**CONVEYANCING ACT—continued.**

- Mortgagee—Receiver appointed by—Dis-  
tress—Injunction against.  
See LANDLORD AND TENANT—DIS-  
TRESS. 3.
- Notice specifying breach of covenant—  
Relief.  
See LANDLORD AND TENANT—RE-ENTRY.  
1, 3.
- Sale—Discharge of incumbrances on.  
See VENDOR AND PURCHASER—CONVEY-  
ANCE. 1.
- Sale instead of foreclosure.  
See MORTGAGE—FORECLOSURE. 2, 3.
- Title of vendor.  
See VENDOR AND PURCHASER—TITLE.
- Trustee—Appointment.  
See TRUSTEE—APPOINTMENT. 3, 4.  
TRUSTEE ACTS. 5.
- Vendor and purchaser—Refusal to com-  
plete.  
See VENDOR AND PURCHASER—CON-  
TRACT. 2.
- Vesting order—Death of sole trustee.  
See TRUSTEE ACTS. 8.

**CO-PARCENERS** — Trustee Acts — “Seised jointly.”  
See TRUSTEE ACTS. 6.

**COPYHOLD** — *Admittance* — *Purchase of several distinct Tenements under one Disposition—Right to split Admittance—Fines—Special Custom—Evidence.* There is no general copyhold law that, in manors in which a fine is only payable on the first admittance of a tenant, a purchaser of several distinct copyhold tenements under one disposition—whether a will, or surrender, or otherwise—is entitled as of right to split his admittance, i.e. is entitled to compel the lord of the manor to admit him to any one or more of such several tenements, and to take admittance to the others at any subsequent time, as and when he pleases.

A special custom in a manor, that a purchaser of several distinct copyhold tenements under one disposition, must take admittance to all at one and the same time, and pay one general fine in respect of all, is good.

Such a special custom may be evidenced by a uniform course of practice or usage in the manor for a number of years, although it does not otherwise appear either on the Court rolls, or in any custumal or other record, of the manor. *JOHN-STONE v. EARL SPENCER* - 30 Ch. D. 581,

[53 L. T. 502, 34 W. R. 10

2. — *Trustees—Customary Heiress of Devisee of Surviving Trustee—Right of Escheat—Mandamus.* A testatrix who died in 1851 devised her copyhold property to a trustee in trust to pay the rents and profits to J. King for life, and after her death to certain charitable purposes which were void under the Mortmain Acts. The testatrix died without heirs. The trustee named in the will refused the trust, and two trustees were appointed by order of the Court in 1853, who were admitted upon the Court rolls to hold upon the trusts of the will. One trustee died in 1873, and the surviving trustee, who died in

**COPYHOLD—continued.**

1877, devised his trust estate to two trustees, neither of whom was admitted to the copyholds. The survivor of these trustees made no devise of his trust estates, and died leaving his youngest daughter, Janet Hawkins, his customary heiress according to the custom of this manor. The tenant for life under the will died in 1883:—*Held*, by Pearson, J., that Janet Hawkins, who claimed by escheat and under a resulting trust, was entitled to be admitted as tenant to the copyhold property for her own benefit as against the lord of the manor. *GALLARD v. HAWKINS*

[27 Ch. D. 298, 53 L. J. Ch. 834, 51 L. T. 689,  
[33 W. R. 31

**COPYRIGHT** — “*Book separately published*” — *Face of Barometer—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2.* The face of a barometer, displaying special letterpress: *held*, by Chitty, J., not to be capable of registration under the above Act, not being, within s. 2, “a book separately published.” *DAVIS & Co. v. COMITTI*

[54 L. J. Ch. 419, 52 L. T. 539, W. N. (1885) 15

2. — *Designs—Registered Design—Article erroneously marked—Patents, Designs, and Trade-marks Act, 1883 (46 & 47 Vict. c. 57), ss. 51, 113—Designs Rules, 1883, Rule XXXII.—Costs—Innocent Infringer—Notice before Action.* Sect. 51 of the Patents, Designs and Trade-marks Act, 1883, applies to the delivery on sale of articles to which a design registered under the Act 5 & 6 Vict. c. 100, has been applied, and the marking of such goods since the Act of 1883 came into operation is regulated by that Act. Consequently, the proprietor of a design registered under the Act 5 & 6 Vict. c. 100 is in a proper case entitled to the benefit of the proviso contained in sect. 51, which relieves him from the forfeiture of his copyright, resulting from the omission to mark the articles with the prescribed mark, if he shews that he “took all proper steps to ensure the marking.”

The proprietor of a registered design instructed the manufacturer who made for him the articles to which the design was applied, to stamp the proper mark upon them, and furnished him with a die for the purpose. By inadvertence the manufacturer marked some of the articles with a mark which belonged to another design registered by the same proprietor, the copyright of which had expired, using for the purpose by mistake an old die which remained in his possession, and the proprietor, after the Act of 1883 came into operation, sold some of the articles thus wrongly marked without observing the error. The letters *Rd.* formed part of both of the marks:—*Held*, by Pearson, J., that the proprietor had not forfeited his copyright, but that he was protected by the proviso in sect. 51.—*Held*, that an innocent infringer of a registered design must pay the costs of a motion for an injunction to restrain him from infringing, though the Plaintiff had given him no notice of the infringement before serving him with the writ in the action.

*Upmann v. Forester* (24 Ch. D. 231, 52 L. J. Ch. 946, 49 L. T. 122, 32 W. R. 23) followed. *WITTMAN (or WITTMANN, or WILLMAN) v. OPPENHEIM* - 27 Ch. D. 260, 54 L. J. Ch. 56,  
[50 L. T. 713, 32 W. R. 766

**COPYRIGHT—continued.**

3. — *Designs—Patents, Designs, and Trade-marks Act, 1883* (46 & 47 Vict. c. 57), s. 47—*New or Original Design.*] A design is not a proper subject of registration under the Patents, Designs and Trade-marks Act, 1883, unless there is a clearly marked and defined difference involving substantial novelty between it and any design previously in use.

A design for a shirt collar was registered, the advantages claimed for which were—the height of the collar above the stud which fastened it in front, the cutting away the corners in the segment of a circle, and the absence of a band. A collar was shewn to have been previously in use which had no band, and in which the corners were cut away in arcs of circles; but the cutting away was not so wide, and the height above the stud was not so great, as in the registered design:—

*Held*, that the registered design was not new or original within the meaning of the Act, and must be removed from the register. *LE MAY v. WELCH. Re LE MAY'S REGISTERED DESIGN*

[28 Ch. D. 24, 54 L. J. Ch. 279, 51 L. T. 867, 33 W. R. 33 (C.A.)]

**CORONER—Jurisdiction to hold inquest—Burning dead body.**

*See CRIMINAL LAW. 2.*

**CORPORATION—Borrowing Powers—Ultra vires.]**

The Respondents were constituted a company by an Act of Geo. 2, for the purpose of recovering and preserving the navigation of the river Dee. This Act was amended by subsequent Acts, but none of them expressly authorized or forbade the company to borrow, till the Act 14 & 15 Vict. c. lxxxvii., which, by sect. 24, empowered the company to borrow at interest for the purposes of their Acts upon bond or mortgage of the lands recovered and inclosed by them, or partly upon bond and partly upon such mortgage, a sum not exceeding £25,000, and also a further sum, not exceeding £25,000, upon mortgage of their tolls, rates and duties:—

*Held*, affirming the decision of the Court of Appeal, that whether the earlier Acts gave an implied power to borrow or not, the company was prohibited by the 14 & 15 Vict. c. lxxxvii. from borrowing except in accordance with the provisions of that Act.

By Lord Blackburn:—The law laid down by the House of Lords in *Ashbury Company v. Riche* (Law Rep. 7 H. L. 653) applies to all companies created by any statute for a particular purpose, and not only to companies created under the Companies Act, 1862 (25 & 26 Vict. c. 89). *BARONESS WENLOCK v. RIVER DEE COMPANY*

[10 App. Cas. 354, 54 L. J. Q. B. 577, 53 L. T. 82, 49 J. P. 773 (H. L., E.)]

*See also COMPANY.*

— Contract by, not under seal.

*See ELEMENTARY EDUCATION ACTS. 3. HIGHWAY. 1.*

*PUBLIC HEALTH ACT. 3, 4.*

— Injunction—Disobedience to.

*See PRACTICE—SEQUESTRATION.*

— Maintenance by company in liquidation.

*See CHAMPERTY.*

— Municipal.

*See MUNICIPAL CORPORATION.*

**COST-BOOK COMPANY—Winding-up—Inspection of documents.**

*See COMPANY—COST-BOOK COMPANY.*

**COSTS.**

*See PRACTICE—COSTS.*

— Bankruptcy proceedings.

*See BANKRUPTCY—COSTS.*

— Trustees.

*See TRUSTEE—COSTS AND CHARGES.*

**COUNTER-CLAIM—Action for rent—Counter-claim for compensation for improvements.**

*See LANDLORD AND TENANT—IMPROVEMENTS. 1.*

— Balance under £20 recovered.

*See PRACTICE—COSTS. 5.*

— By third party.

*See PRACTICE—THIRD PARTY. 1.*

— Defendant out of jurisdiction—Security for costs.

*See PRACTICE—COSTS. 17.*

— Embarrassing—Exclusion of.

*See PRACTICE—PLEADINGS. 5.*

**COUNTY COURT—Appeal—Time.]** Two days after judgment had been given in an action in the County Court, application was made to the judge for a new trial. The judge took time to consider, and, after a fortnight, refused to grant a new trial. Within two days of such refusal a rule nisi was obtained in the High Court for a new trial.

*Held*, by Coleridge, C.J., and Mathew, J., that such rule was obtained out of time, as the eight days for appealing began to run from the day of the original trial, and not from the refusal of the County Court Judge. *MORRIS & SONS v. LOWE & Co.*

34 W. R. 45

2. — *Jurisdiction—Bankruptcy—Consent to Jurisdiction—Qualified Leave to appeal—Bankruptcy Act, 1883.]* Consent to the jurisdiction under the above section was given in ignorance of the fact that an order for summary administration had been made. The County Court Judge gave only a limited leave to appeal.

*Held*, by Cave, J., that the leave to appeal ought not to have been limited, and that the consent to the jurisdiction was vitiated by the fact that it had been given under a mistaken impression of facts not easily to be ascertained.

*Ex parte SERJEANT. Re SANDARS*

[54 L. J. Q. B. 331, 52 L. T. 618, 49 J. P. 582.]

3. — *Jurisdiction—Bankruptcy—Contempt of Court—Bankruptcy Act, 1869* (32 & 33 Vict. c. 71), ss. 66, 96; and 1883 (46 & 47 Vict. c. 52), ss. 27, 100.] The Bankruptcy Act, 1869, s. 66, which conferred upon the judge of a County Court sitting in bankruptcy all the powers and jurisdiction of a judge of the Court of Chancery, thereby gave to him the power to commit for a contempt of Court; and therefore a person who disobeyed a summons issued under s. 96 of that statute to attend and give evidence as to the bankrupt's estate, and to produce documents in his control relating thereto, might be attached for contempt; and the power of commitment was not taken away by the fact that the latter section also conferred a power on the judge of the County Court to order by warrant the person who had

**COUNTY COURT—continued.**

disobeyed the summons to be apprehended and brought up for examination, this latter remedy being only cumulative. *REG. v. SURREY* (or CROYDON) COUNTY COURT JUDGE - 13 Q. B. D. 963, [53 L. J. Q. B. 545, 51 L. T. 102, 33 W. R. 68 (C.A.)]

4. — *Jurisdiction—Prohibition—Insufficient notice for new trial.* O. xxviii., r. 1, of the County Court Rules of 1875, provides that a person applying for a new trial in a County Court shall give the opposite party seven clear days' notice in writing of his intention so to apply.

The Defendant gave the Plaintiffs notice by letter on the 8th Nov., stating that he would on the 12th Nov. apply for a new trial. The Plaintiffs refused to accept this notice as being too short, and did not attend at the hearing on the 12th, when the fact of the Plaintiffs' objection was brought before the judge, who, however, granted a new trial.

On application by the Plaintiffs for a prohibition to restrain the judge from hearing the case on the new trial:—*Held*, by Grove and Hawkins, JJ., that a prohibition ought not to be granted, as the proper proceeding to have been adopted would have been to make an application to the judge to set aside the order for a new trial as irregular. *JONES (TRUSTEES OF) v. GITTINS*

[51 L. T. 599]

5. — *Practice—Payment out, by mistake—Order for Repayment and Execution in Default—Liability of Registrar and High Bailiff—Action for wrongful Seizure—9 & 10 Vict. c. 95, s. 94—13 & 14 Vict. c. 61, s. 19—15 & 16 Vict. c. 54, s. 6—19 & 20 Vict. c. 108, ss. 60, 72.* Where money has been paid out of a County Court by mistake, the Judge has power under s. 94 of 9 & 10 Vict. c. 95, and the County Court Rules of 1875, O. 19, r. 1, to order that the money be repaid into Court, and that in default of repayment the claimant be at liberty to recover it from the person to whom it was improperly paid by issuing warrant of execution.

In an action for wrongful seizure made in pursuance of such an order, *held*, that, had the Judge not had jurisdiction to make the order, the registrar and high bailiff would have been protected from liability for anything done by them in carrying out the order under 19 & 20 Vict. c. 108, s. 60.

The repeal of 9 & 10 Vict. c. 95, s. 118, by 30 & 31 Vict. c. 142, s. 33, has not in effect repealed s. 72 of 19 & 20 Vict. c. 108.

So *held* (48 J. P. 613, 1884 Dig. col. 134), by Denman and Williams, JJ.; Manisty, J., dissenting.

*Held*, by the Court of Appeal, that, assuming the order to have been made without jurisdiction, the defendants were protected by 13 & 14 Vict. c. 61, s. 19, and 15 & 16 Vict. c. 54, s. 6. *ASPEY v. JONES* 54 L. J. Q. B. 98, 33 W. R. 217 (C.A.)

6. — *Practice—Remitting action to County Court—Liquidated demand exceeding £50—Reduction within statutory limit by payment after issuing of writ.* An action for a liquidated demand exceeding £50 cannot be remitted to the County Court, though the amount of the claim

**COUNTY COURT—continued.**

has been reduced below that sum by payment made before service, but after the issuing of the writ of summons. *DONOHUE v. DONOHUE*

[16 L. R. Ir. 135]

7. — *Practice—Security for Costs—Remission of Action to County Court—"Visible Means" of Plaintiff—County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 10.* By the term "visible means" as used in s. 10 of the County Courts Act, 1867, is intended such means as could be fairly ascertained by a reasonable person in the position of the Defendant. On the filing of the affidavit the jurisdiction of the Judge arises, and he is to satisfy himself not merely whether the Plaintiff has any "visible means," but whether he has any means at all of paying the costs, and the Judge has a judicial discretion whether he will make the order. On an application under s. 10 of the County Courts Act, 1867, it appeared from the affidavit that the Defendant was in possession of certain property of the Plaintiff under a claim for rent for £5929, that the Plaintiff had no property upon which an execution under a judgment for £2404 could be levied, that his furniture had been sold under an execution, and that he had assigned his property for the benefit of his creditors. It also appeared that the Plaintiff was being employed as a colliery manager at a weekly wage of £4, the employment being determinable on three months' notice, or on payment of three months' salary in lieu of notice, or without notice, in the event of wilful misconduct:—*Held*, that whether or not the salary could be attached, the Plaintiff had no substantial means of paying the costs of the action in the event of the verdict being for the Defendant, and that an order was rightly made under s. 10. *COUNSEL v. GARVIE* (Ir. R. 5 C. L. 74) considered. *LEA v. PARKER* 13 Q. B. D. 832,

[54 L. J. Q. B. 38, 33 W. R. 101 (C.A.)]

— Action remitted to—Costs.

See PRACTICE—COSTS. 2.

— Action remitted to—New trial.

See PRACTICE—NEW TRIAL. 1.

— Action of tort under Employers' Liability Act—Stay of proceedings.

See MASTER AND SERVANT. 15.

— Action under Employers' Liability Act—Removal into superior Court.

See MASTER AND SERVANT. 14.

— Appeal in bankruptcy—Solicitor's right of audience.

See BANKRUPTCY—APPEAL. 8.

— Appointment by Judge of distress bailiff under Agricultural Holdings Act.

See LANDLORD AND TENANT—DISTRESS. 1.

— Counter claim—Action in High Court for same cause of action.

See ESTOPPEL. 5.

— Judgment in, against executor—Subsequent administration order.

See EXECUTOR—ACTIONS. 10.

— Judgment summons—Transfer to Bankruptcy Court.

See BANKRUPTCY—RECEIVING ORDER. 1.

**COUNTY COURT**—*continued.*

— Jurisdiction—Bankruptcy—Restraining proceedings in High Court.

See **BANKRUPTCY**—**JURISDICTION**. 1.

— Jurisdiction—Costs on higher scale.

See **CITY OF LONDON COURT**.

— Rule to—Solicitor denied audience on examination of debtor.

See **BANKRUPTCY**—**EXAMINATION**. 2.

**COURT**—City of London Court—Costs on higher scale.

See **CITY OF LONDON COURT**.

— Claim of right to be present in—Assault—Justices' jurisdiction.

See **MANDAMUS**. 2.

— County Court.

See **COUNTY COURT**.

— Court of Appeal—Jurisdiction—Striking solicitor off the Roll.

See **SOLICITOR**—**STRIKING OFF ROLL**.

— Inferior—Prohibition to—Want of jurisdiction.

See **PROHIBITION**.

— Mayor's Court—Jurisdiction—Prohibition.

See **MAYOR'S COURT**.

— Salford Court—Jurisdiction—Prohibition.

See **SALFORD COURT**.

**COURT FEES**—"Entering cause or matter for trial or hearing"—Rule against justices.

See **PRACTICE**—**COSTS**. 6.

— Hearing—Appeal from Chambers.

See **PRACTICE**—**CHAMBERS**. 5.

**COUSINS**—Bequest to first and second cousins.

See **WILL**—**CONSTRUCTION**. 12.

**COVENANT**—*Breach—Mutual Restrictive Covenants—Building Estate—Alteration of Character of Estate—Acquiescence—Lord Cairns' Act (21 & 22 Vict. c. 27).]* A building estate was laid out in lots, which were sold by the owners of the estate to different purchasers, each of whom covenanted with the vendors and with the purchasers of the other lots entitled to the benefit of the covenant not to build a shop on his land, or to use his house as a shop or to carry on any trade therein. The purchaser of one of the lots, who occupied his house as a private residence, brought an action against the purchaser of another lot, who was using his house as a beershop with an "off" license, to restrain him from breaking his covenant and for damages. The Plaintiff had known for three years before the action was commenced that the Defendant was using his house as a beershop, and had himself bought beer at the shop. There was evidence that some of the houses built on other lots had been for some time used as shops notwithstanding the covenant, and that some of the houses near the Plaintiff's house were occupied, not each by a single tenant, but by two families at weekly rents:—

*Held*, that the change in the character of the neighbourhood was not in itself a ground for refusing relief to the Plaintiff, as the change was not caused by his conduct; but that the Plaintiff had lost the right to enforce his covenant either by injunction or damages, through his acquiescence in the proceedings of the Defendant.

**COVENANT**—*continued.*

*Duke of Bedford v. Trustees of the British Museum* (2 My. & K. 552) explained.

*Lord Cairns' Act* (21 & 22 Vict. c. 27) is applicable to cases where the damage sustained by the Plaintiff is only nominal, as well as to cases where he is entitled to substantial damages.

The repeal of *Lord Cairns' Act* by 46 & 47 Vict. c. 49, has not affected the jurisdiction of the Court.

*Per Fry, L.J.*:—An amount of acquiescence on the part of the Plaintiff which would not be sufficient to bar his action, may be sufficient to induce the Court to give damages instead of an injunction. *SAYERS v. COLLYER* 28 Ch. D. 108, [54 L. J. Ch. 1, 51 L. T. 723, 33 W. R. 91,

[49 J. P. 244 (C.A.)]

2. — *Breach—Waiver.*] A notice, requiring a tenant to remedy a breach of covenant by repairing premises within three months, expired on February 1, 1884. No repairs were then done, and on February 2, the rent due at Christmas, 1883, was accepted. *Held*, that the acceptance of the rent was no waiver of the breach of covenant. *CRONIN v. ROGERS* 1 C. & E. 348

3. — *Construction—Lease—Covenant to employ a particular person to draw assignments and underleases—Assignment of underlease.*] A lease granted by the Mercers' Company contained a covenant that on the assignment of the lease or the grant of any underlease thereunder, the clerk to the company should be employed or a penalty of £5 paid. The purchaser from an underlessee of his underlease raised the objection that the assignment should be prepared by the clerk to the Mercers' Company or the penalty of £5 paid. *Held*, by North, J., that the covenant did not apply to the assignment of an underlease, and that the objection was therefore untenable. *COLLETT v. YOUNG* - - - 33 W. R. 543

4. — *Construction—To pay "all Taxes, Rates, Impositions, and outgoings charged or imposed on or in respect of the Premises"—Metropolis Management Acts, 1855 (18 & 19 Vict. c. 120), s. 105; and 1862 (25 & 26 Vict. c. 102), s. 96.* *HILL v. EDWARD* - - - W. N. (1885) 32

5. — *Running with Land—To make and keep in repair Road—Personal Covenant—Notice, Equitable Doctrine of.*] The doctrine in *Tulk v. Moxhay* (2 Ph. 774) is limited to restrictive stipulations, and will not be extended so as to bind in equity a purchaser taking with notice of a covenant to expend money on repairs or otherwise which does not run with the land at law.

*Semble*, that the burden of a covenant (not involving a grant) never runs with the land at law, except as between landlord and tenant.

*Cooke v. Chilcott* (3 Ch. D. 694) overruled on this point.

*Morland v. Cook* (Law Rep. 6 Eq. 252) explained.

*Holmes v. Buckley* (1 Eq. C. Ab. 27) discussed. Consideration of the circumstances under which a covenant will be held to touch or concern the land of the covenantee so that the benefit may run with the land.

A., by deed, conveyed for value to trustees in fee a piece of land as part of the site of a road

**COVENANT—continued.**

intended to be made and maintained by the trustees under the provisions of a contemporaneous trust deed (being a deed of settlement for the benefit of a joint stock company established to raise the necessary capital for making the road); and in the conveyance the trustees covenanted with A., his heirs and assigns, that they, the trustees, their heirs and assigns, would make the road and at all times keep it in repair, and allow the use of it by the public subject to tolls. The piece of land so conveyed was bounded on both sides by other lands belonging to A. The trustees duly made the road, which afforded the necessary access to A.'s adjoining lands. A. afterwards sold his adjoining lands to the Plaintiff, and the trustees sold the road to the Defendants, both parties taking with notice of the covenant to repair:—

*Held* (affirming the decision of the Vice-Chancellor of the Duchy of Lancaster), that the Plaintiff could not enforce the covenant against the Defendants. *AUSTERBERRY v. OLDHAM* (MAYOR OF) [29 Ch. D. 750, 53 L. T. 543, 33 W. R. 807, 49 J. P. 532 (C.A.)]

— Against assignment—Agreement for underlease.

See LANDLORD AND TENANT—AGREEMENT. 4.

— Breach—Claim by executor for—Retainer. See EXECUTOR—ADMINISTRATION. 9.

— Breach—Re-entry. See LANDLORD AND TENANT—RE-ENTRY. 1, 3.

— Lease—Covenant to deliver up premises in good repair.

See LANDLORD AND TENANT—LEASE. 2.

— Lease—Option to purchase. See LANDLORD AND TENANT—LEASE. 7.

— Not to use hay, straw, &c.—Trustee in bankruptcy bound by. See BANKRUPTCY—DISCLAIMER. 3.

— Restraint of trade. See RESTRAINT OF TRADE.

— Restrictive—Conditions of sale—Non-disclosure—Rescission. See VENDOR AND PURCHASER—CONTRACT. 2.

— Restrictive—Sale of two lots at auction—Withdrawal of one lot. See VENDOR AND PURCHASER—CONDITIONS OF SALE. 6.

— Restrictive—Notice of. See VENDOR AND PURCHASER—TITLE. 5.

— Separation deed. See HUSBAND AND WIFE—SEPARATION DEED. 2, 3, 5.

— To pay rent or royalty—Action on—Limitation. See LIMITATIONS, STATUTES OF. 1.

— To pay sum of money during life or after death—Succession duty. See REVENUE. 13.

— To renew lease—Construction. See LANDLORD AND TENANT—LEASE. 9.

— To repair—Notice of breach. See LANDLORD AND TENANT—LIABILITIES. 2.

**COVENANT—continued.**

— To settle after-acquired property.

See SETTLEMENT—AFTER-ACQUIRED PROPERTY.

**CREDITORS' DEED**—*Act of Bankruptcy—Subsequent Bankruptcy of Debtor—Liability of Trustee under Deed to account to Trustee in Bankruptcy.*

When the trustee under a creditors' deed takes possession of the debtor's property and carries on his business under the provisions of the deed, and the debtor is subsequently adjudicated a bankrupt on the act of bankruptcy committed by the execution of the deed, the trustee in the bankruptcy must elect to treat the trustee under the deed either as a trespasser or as his agent. If he elects to treat him as a trespasser, the trustee under the deed must deliver up to him all the property of the bankrupt of which he took possession, and which remains in his possession unconverted, and must pay him the value of that property which he has converted. So *held*, by Stephen and Cave, JJ. *Ex parte VAUGHAN. Re RIDDEBOUGH* - 14 Q. B. D. 25, 33 W. R. 151

2. — *Execution of Deed of Assignment—Effect of Note appended to Signature.* Not every attempt by a form of execution to restrain the full operation of a deed can be treated as a non-execution of it.

Where a deed of assignment by debtors to a trustee for the benefit of all creditors who should execute the deed was executed by the Plaintiffs, who appended a note that they executed only in respect of certain claims scheduled to the deed and amounting to \$73,531, and it appeared that subsequently thereto they received a sum of money from the trustee by virtue of their execution of the deed:—

*Held*, that the Plaintiffs were bound. The note did not amount to a refusal to execute; and the Plaintiffs having received payment under the deed could not be heard to repudiate it, and deny their execution.

*Wilkinson v. Anglo-Californian Gold Mining Company* (18 Q. B. (N.S.) 728, 21 L. J. Q. B. 327), *held* to be inapplicable. *EXCHANGE BANK OF YARMOUTH v. BLETHEN* - 10 App. Cas. 293, [54 L. J. P. C. 27, 53 L. T. 537, 33 W. R. 801 (P.C.)]

3. — *Time for executing.* Incumbrancers who had claimed priority over a creditors' deed and failed in their contention were not allowed afterwards to execute and take the benefit of the deed. *Re MEREDITH. MEREDITH v. FACEY*

[29 Ch. D. 745, 54 L. J. Ch. 1106, 33 W. R. 778] See also BANKRUPTCY—COMPOSITION.

**CREMATION**—Obstructing coroner.

See CRIMINAL LAW. 2.

**CRIMINAL LAW**—*Abduction—Connivance of Child—24 & 25 Vict. c. 100, s. 56.* An indictment under the above section for unlawfully, by force or fraud, taking away, enticing away, or detaining a child under the age of 14, with intent to deprive the parent or guardian of the possession of such child, is not supported by evidence of force or fraud exercised upon the guardian of the child, nor upon any other person than the child so taken or detained; the force or fraud must have been practised upon the child himself in order to bring it within the statute. *REG. v. BARRETT* - - - 15 Cox, C.C. 656

**CRIMINAL LAW—continued.**

2. — *Burning Dead Body — Obstructing Coroner—Inquest, Destruction of Body to prevent — Misdemeanor, obstructing Justice.* It is a misdemeanor to burn or otherwise dispose of a dead body, with intent thereby to prevent the holding upon such body of an intended coroner's inquest, and so to obstruct a coroner in the execution of his duty, in a case where the inquest is one which the coroner has jurisdiction to hold. A coroner has jurisdiction to hold, and is justified in holding, an inquest if he honestly believes information which has been given to him to be true, which, if true, would make it his duty to hold such inquest. *REG. v. STEPHENSON*

[13 Q. B. D. 331, 53 L. J. M. C. 176, 52 L. T. 267, 33 W. R. 44, 49 J. P. 486, 15 Cox, [C. C. 679 (C.C.R.)]

3. — *Evidence—Confession obtained by questions—Statement of one prisoner incriminating others—Admissibility of, against them.* After a prisoner is in custody the police have no right to ask him questions, and an admission or confession obtained in that way is inadmissible in evidence; and where one of several prisoners in custody makes a statement admitting his guilt and also incriminating the other prisoners, and such statement is afterwards read over to the others by the constable who asks them what they have to say to that, this is in the nature of a cross-examination of the prisoners, and such statement and their answers are not admissible against them on their trial.

*Secus* where the persons are not in custody. *REG. v. GAVIN* - - - 15 Cox, C. C. 656

4. — *Evidence—Confession—Dying Declaration—Deposition—11 & 12 Vict., c. 42, s. 17.* On an indictment for manslaughter, the prosecution proposed to put in evidence a statement made by the prisoner at the police station, where he was visited by his uncle, who said to him, "You had better tell the truth, even if it hangs you." A police sergeant was standing a couple of yards off, and he, in reply to a question by the uncle, said, "that it would be the best plan."

*Held*, by Manisty, J., that the confession must be excluded.

A deposition by the deceased taken under the above section, was held admissible. *REG. v. EDWARD JONES* - - - 49 J. P. 728

(See also *REG. v. MANN*, *id.* 743, as to admissibility of a dying declaration.)

5. — *Evidence — Confession — Where a prisoner under arrest for murder, on being asked (without any caution as to the effect of admissions) what he had done with the body, replied by pointing to the place where the body had been found, it was held that evidence of the foregoing was improperly admitted. NOLEN v. STATE* - - - 46 Amer. R. 247 (U.S.)

6. — *Evidence—Res gestæ—Murder—Declarations by deceased. KIRKBY v. COMMONWEALTH* - - - 46 Amer. R. 747 (U.S.)

7. — *False Pretences—Evidence—Insurance Company—Agent obtaining Premium on lapsed Policy.* In 1883 P., the agent of a life assurance company, received from V. the annual premium due for the renewal of his policy. Instead, how-

**CRIMINAL LAW—continued.**

ever, of giving him the official receipt, P. gave him an informal receipt, appropriated the money, and returned the official receipt to the company, who treated the policy as lapsed. In 1884, on the 7th April, P. called on V. for the annual premium as usual. V. being unable to pay, P. called again on the 21st April, the days of grace allowed by the policy having to the knowledge of V. expired on the 15th April, and told V. that payment on that day "would be effectual," and V. understood that P. was to "apply to the company to let the policy go on." The company were in the habit of allowing lapsed policies to be revived, upon the payment of overdue premiums, and upon the representations thus made by P., V. paid him a sum of money. P. having been convicted of obtaining this sum by false pretences:—

*Held*, by Coleridge, C.J., Huddleston, B., and Mathew, J., that there was evidence for the jury in support of the indictment.

*Held*, by Grove and Manisty, JJ., *diss.*, that there was no such evidence to go to the jury on the ground that payment of the premium in 1883 to P., as agent of the company, was a payment to the company, and that the policy had not, therefore, lapsed or become void, except so far as both V. and P. knew that it had lapsed on the 15th April. *REG. v. POWELL* - 54 L. J. M. C. 26, [51 L. T. 713, 49 J. P. 183, 15 Cox, C. C. 568 (C.C.R.)]

8. — *False Pretences—Sale of Farm Stock—Stock subject to Bill of Sale—Representation of Ownership—Onus of proof.* S., the tenant of a farm, granted a bill of sale over all the live and dead stock which then was, or which at any time thereafter should be, in or about the premises. In the ordinary course of business S. would have been at liberty to sell stock on the farm, but two months after the granting of the bill of sale he sold all the farm stock which was upon the farm without anything being said as to the ownership of the stock, or as to the existence of the bill of sale. No evidence was given on behalf of S., at the trial of an indictment against him for false pretences, to prove that he had obtained the leave of the bill of sale holder to the selling of the stock:—

*Held*, that the *onus* lay on S. of proving that he had leave to sell the stock, and not on the prosecution; that S. had by the act of selling the stock represented himself as being the absolute owner thereof; and that the prosecutor had paid for the stock in the belief that S. had authority to sell the same, and was guilty of the offence of obtaining money by false pretences. *REG. v. HAZZLEWOOD* (48 J. P. 151) not followed. *REG. v. SAMPSON* - 52 L. T. 772, 49 J. P. 807 (C.C.R.)

9. — *False pretences of innkeeper to secure guest—Guest induced by false pretence to pay for a month's board in advance. MORGAN v. STATE* [49 Amer. R. 55 (U.S.)]

10. — *Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24) s. 1—Making and concurring in making false entry.* The prisoner, B., who was employed by N. as a collector, collected from one S. £8 due to N. The ordinary course of business was for B., at the end of each day, to account to E., N.'s cash clerk, for moneys collected

**CRIMINAL LAW—continued.**

during the day, E.'s duty being to enter payments accounted for by B. in the cash-book. The same evening B. gave to E. a slip of paper on which he had written, "S., on account, £5," which E. copied into the cash-book, believing it represented the whole amount collected by B. from S.—*Held*, that B. was guilty of an offence within the above section. *REG. v. BURT* 51 L. T. 607, 49 J. P. 233, [15 Cox, C. C. 564 (C.C.R.)]

11. — *Indecent Exposure of Person—Public Place—Public Nuisance*—14 & 15 Vict. c. 100, s. 29.] The prisoner was convicted of indecently exposing his person to divers subjects of the Queen in a certain public place, upon evidence shewing that the place in question was out of sight of the public footpath, but was a place to which the prisoner had gone with several little girls, though without any legal right to go there, and was a place to which persons were in the habit of going without having any strict legal right so to do, and that persons so going were never in any way hindered or interfered with:—*Held*, by the Court (Lord Coleridge, C.J., Grove, J., Huddleston, B., Manisty and Mathew, JJ.), that the conviction was correct, and that the jury were justified in finding that the place was public.—*Seem*, that the offence may be indictable if committed before divers subjects of the realm, even if the place be not public. *REG. v. WELLARD* [14 Q. B. D. 63, 54 L. J. M. C. 14, 51 L. T. 604, [33 W. R. 156, 49 J. P. 296, 15 Cox, C. C. 559 (C.C.R.)]

12. — *Larceny by a Bailee*—24 & 25 Vict. c. 96, s. 3—*Infant, Bailment to*.] An infant over fourteen years of age fraudulently converted to his own use goods which had been delivered to him by the owner under an agreement for the hire of the same:—*Held*, that he was rightly convicted of larceny as a bailee of the goods under 24 & 25 Vict. c. 96, s. 3. *REG. v. McDONALD* [15 Q. B. D. 323, 52 L. T. 583, 33 W. R. 735, [49 J. P. 695 (C.C.R.)]

13. — *Larceny by trick*. *GRUNSON v. STATE* [46 Amer. R. 178 (U.S.)]

14. — *Larceny*—"Taking and carrying away"—Lifting a pocket-book partly from the pocket of another person with intent to steal it. *STATE v. CHAMBERS* - 46 Amer. R. 550 (U.S.)

15. — *Libel—Criminal Information—Newspaper Libel and Registration Act, 1881* (44 & 45 Vict. c. 60), s. 3—*Information filed without Fiat of Director of Public Prosecutions*.] The 3rd sect. of the Newspaper Libel and Registration Act, 1881, which enacts that no criminal prosecution shall be commenced against any proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for any libel published therein, without the written fiat or allowance of the Director of Public Prosecutions in England, or Her Majesty's Attorney General in Ireland, being first had and obtained, does not apply to a criminal information for libel filed by order of the Court. *YATES v. THE QUEEN* 14 Q. B. D. 648, [54 L. J. Q. B. 258, 52 L. T. 305, 33 W. R. 492, [49 J. P. 436, 15 Cox, C. C. 272, 686 (C.A.)]

**CRIMINAL LAW—continued.**

16. — *Murder—Killing and eating Flesh of Human Being under Pressure of Hunger*—"Necessity"—*Special Verdict—Certiorari—Offence on High Seas—Jurisdiction of High Court*.] A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life.—At the trial of an indictment for murder it appeared, upon a special verdict, that the prisoners D. and S., seamen, and the deceased, a boy between seventeen and eighteen, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean, and was probably more than 1000 miles from land; that on the eighteenth day, when they had been seven days without food and five without water, D. proposed to S. that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the twentieth day D., with the assent of S., killed the boy, and both D. and S. fed on his flesh for four days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation:—*Held*, that upon these facts, there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder. (See memorandum, at p. 560 of 14 Q. B. D., as to practice on a special verdict.) *REG. v. DUDLEY AND STEPHENS* [14 Q. B. D. 273, 560; 54 L. J. M. C. 32, 52 L. T. 107, [33 W. R. 347, 49 J. P. 69, 15 Cox, C. C. 624]

17. — *Murder—Parricide in defence of mother—Reasonable belief of necessity*.] Under circumstances which might have induced the belief that a man was cutting his wife's throat, their son shot and killed his father:—*Held*, by Lopes, J., that if the son had reasonable grounds for believing and honestly believed that his act was necessary for the defence of his mother, the homicide was excusable. *REG. v. ROSE* [15 Cox, C. C. 540]

18. — *Practice—Autrefois acquit—Prosecution for arson of books of account in a mill—Previous acquittal of arson of mill*. *STATE v. COLGATE* - - - 47 Amer. R. 507 (U.S.)

19. — *Practice—Omission to ask prisoner convicted of murder if he has anything to say why judgment should not be pronounced*. *STATE v. TREZEVANT* - - - 47 Amer. R. 840 (U.S.)

20. — *Practice—Statement by Prisoner—Witnesses called by Prisoner*.] A prisoner who is defended by counsel may, after his counsel's address to the jury, make a statement of facts to the jury. But when it is proposed to call witnesses for the prisoner, it will not be competent for him to make any statement to the jury in addition to the address by his counsel. *REG. v. MILLHOUSE* - - - 15 Cox, C. C. 622

**CRIMINAL LAW—continued.**

21. — *Rape—Consent obtained by fraud—* Consent of a married woman, if fraudulently obtained by personation of her husband, is no defence to an indictment for rape.

*Reg. v. Barrow* (L. R. 1 C. C. 156, 38 L. J. M. C. 20, 19 L. T. 293, 17 W. R. 102, 11 Cox, C. C. 191) not followed. *Reg. v. Dee* 14 L. R. Ir. 468, [15 Cox, C. C. 579 (C.C.R.) (Ir.)]

— Appeal — “Criminal cause or matter” — Information.

See PRACTICE—APPEAL. 5.

— Bail—Indemnity of surety—Illegality.

See CONTRACT. 7.

— Evidence—Solicitor and client—Privileged communication.

See EVIDENCE. 12.

— Extradition—Offence misdescribed by magistrate.

See EXTRADITION.

— “Frequenting” public street with intent to commit a felony.

See VAGRANT ACTS.

— Poaching.

See GAME ACTS.

— Practice—Certiorari—Application after conviction.

See CERTIORARI.

**CROSS-EXAMINATION**—On affidavit.

See PRACTICE—EVIDENCE. 2–5.

**CROWN**—Prerogative—Victorian statute.

See COLONIAL LAW. 13.

— Priority in winding-up.

See COMPANY—WINDING-UP. 13.

**CRUELTY TO ANIMALS**—*Dishorning cattle*—12 & 13 Vict. c. 92, s. 2.] The practice of dishorning cattle, if performed with due care and skill and for the purpose of rendering them more profitable to farmers in the course of their trade, is not cruelty to the animals within the 12 & 13 Vict. c. 92, s. 2.

*Brady v. M'Argle* (14 L. R. Ir. 174, 15 Cox, C. C. 516) commented on. *CALLAGHAN v. SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS*

[16 L. R. Ir. 325]

**CUSTOM**—Auctioneer—Cheque for deposit.

See MORTGAGE—POWER OF SALE. 1.

— Bailment—Bailee's liability.

See BAILMENT.

— Discharging vessel.

See SHIP—DEMURRAGE.

— Manor.

See COPYHOLD.

— Stock Exchange.

See STOCK EXCHANGE. 2, 3.

— Surveyor's remuneration.

See SURVEYOR.

— Trade—Broker's personal liability.

See PRINCIPAL AND AGENT. 1.

— Trade—Hiring of furniture by hotel-keepers.

See BANKRUPTCY—ORDER AND DISPOSITION. 3.

**D.****DAMAGE ACTION.**

See SHIP—COLLISION.

— Practice.

See PRACTICE—ADMIRALTY.

**DAMAGES**—Contract—Measure of Damages—Company—Neglect to register Transfer of Shares—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 26.]

The Plaintiff transferred shares of his in a registered company to A. B. on an agreement between them that if A. B. was accepted as shareholder by the company the shares should be taken by him at their market value in reduction of a debt due to him from the Plaintiff. The consideration was stated in the transfer to be only the sum of 5s., and the transfer was brought to the company for registration without any notice of the said agreement between the Plaintiff and A. B. The company refused to register, on the ground that the Plaintiff was indebted to them, but on its being established after an interval of eighteen months that the Plaintiff was not so indebted, the company registered the transfer. In an action against the company for wrongfully refusing to register, the Plaintiff sought to recover as damages the loss in the market value of the shares between the time when the transfer was brought to the company to be registered and the time when it was in fact registered:—*Held*, that the Plaintiff was entitled to recover only nominal damages, as the contract between the Plaintiff and A. B. was a special one, of which the company had had no notice, and the ordinary contract on the sale of registered shares was only that the seller should give to the purchaser a valid transfer and do all required to enable the purchaser to be registered as member in respect of such shares, the duty of the purchaser, which has not been altered by sect. 26 of the Companies Act, 1867, being to get himself registered as such member. *SKINNER v. CITY OF LONDON MARINE INSURANCE CORPORATION* [14 Q. B. D. 882, 54 L. J. Q. B. 437, 53 L. T. [191, 33 W. R. 628 (C.A.)]

2. — Contract—Measure of Damages—Breach of Contract—Sale of Goods to fulfil a Contract by Vendee.] The Defendants contracted with the Plaintiff to deliver goods to him of a particular shape and description at certain prices and by instalments at different times. When the contract was made the Defendants knew that, except as to price, it corresponded with and was substantially the same as a contract which the Plaintiff had entered into with a French customer of his, and that it was made in order to enable the Plaintiff to fulfil such last-mentioned contract. The Defendants broke their contract, and there being no market for goods of the description contracted for, the Plaintiff's customer recovered damages against him in the French Court to the amount of £28:—*Held*, in an action against the Defendants for their breach of contract, that the Plaintiff was not only entitled to recover as damages the amount of profit he would have made had he been able to fulfil his contract with his customer, but also damages in respect of his liability to such customer, and that in estimating such last-mentioned



**DAMAGES—continued.**

damages the £28 which the French Court had given might be treated as not an unreasonable one at which such damages might be assessed.—*Elbinger Actien-Gesellschaft v. Armstrong* (L. R. 9 Q. B. 478) approved of. *GRÉBERT-BORGNI (or BORGNI) v. NUGENT* - 15 Q. B. D. 85, 54 L. J. Q. B. 511, [1 C. & E. 337 (C.A.)]

3. — *Contract—Measure of Damages.* On a sale of seed potatoes, the potatoes were of an inferior quality to that warranted:—*Held*, that the purchaser was entitled to the difference in value between the crop actually produced, and the crop that would have been produced if the warranty had been complied with, if it were a reasonable thing for the purchaser to plant the seed without examination. *WAGSTAFF v. SHORTHORN DAIRY CO.* - - - 1 C. & E. 324

4. — *Contract—Measure of Damages—Commission Agent.* In an action for damages by a commission agent for wrongfully preventing him from earning his commission, the damages recoverable, where nothing remained to be done by the commission agent to entitle him to his commission if the transaction had gone through, are the full amount of the commission which he would have earned. *ROBERTS v. BARNARD* - 1 C. & E. 336

5. — *Contract—Measure of damages—Breach of contract to sell goods—Previous notice by purchaser to seller of intention not to accept goods.* *KADISH v. YOUNG* 48 *Amer. R.* 548 (U.S.)

6. — *Contract—Measure of damages—Sale of "Paris green" for purpose of killing insects in cotton plant—Delivery of inferior article as "Paris green"—Failure of crop caused thereby—Implied warranty.* *JONES v. GEORGE* 48 *Amer. R.* 290 (U.S.)

7. — *Contract—Measure of damages—Party to contract prevented by other party from performing it—Right to recover (1) outlay and expenses, (2) profits which might have been realised by performance.* *UNITED STATES v. BEHAN* [110 U. S. 338 (U.S.)]

*See also* *LOVELL v. ST. LOUIS, & CO., INSURANCE CO.* - 111 U. S. 264 (U.S.)

8. — *Contract—Measure of damages—Carrier—Loss of goods in transit.* *MOBILE, & CO., RY. CO. v. JUREY* - 111 U. S. 584 (U.S.)

9. — *Remoteness—Support—21 Jac. 1, c. 16—Cause of Action—Recovery of Damages for Injury after Satisfaction for Previous Injury arising from same Act—Action for Subsidence after Compensation for previous Subsidence.* The Plaintiff was the owner of certain land, and in 1867 and 1868, but not afterwards, the Defendants worked a seam of coal lying under and near to the Plaintiff's land, which subsided in consequence of the Defendants' excavations. Some cottages of the Plaintiff standing on his land were damaged by the subsidence and were repaired by the Defendants. In 1882 a second subsidence of the Plaintiff's land occurred owing to the Defendants' workings in 1867 and 1868, and the Plaintiff's cottages were again damaged:—*Held*, that the Plaintiff was entitled to maintain an action for the damage done to his cottages in 1882, and that his right to sue was not barred by the Statute of Limitations.—*Nicklin v. Williams* (10 Ex. 259, 23 L. J. Ex. 335), *Backhouse v. Bonomi* (E. B. &

**DAMAGES—continued.**

*E.* 622, 9 H. L. C. 503), *Whitehouse v. Fellowes* (10 C. B. (N.S.) 765, 30 L. J. C. P. 305, 4 L. T. 177, 9 W. R. 556) discussed.—*Lamb v. Walker* (3 Q. B. D. 389, 47 L. J. Q. B. 451, 38 L. T. 643, 26 W. R. 775) overruled. *MITCHELL v. DARLEY MAIN COLLIERY CO.* - 14 Q. B. D. 125, 53 L. J. [Q. B. 471, 52 L. T. 675, 32 W. R. 947, [48 J. P. 823 (C.A.)]

10. — *Remoteness—Negligence—Proximate cause of injury—Putting dangerous substance in public street.* *HENEY v. DENNIS* 47 *Amer. R.* [378 (U.S.)]

11. — *Remoteness—Negligently carrying railway passenger beyond destination—Evidence admissible in action by passenger.* *CINCINNATI, & CO., RY. CO. v. EATON* - 48 *Amer. R.* 179 (U.S.)  
*See also* *EHRGOTT v. MAYOR* - *ib.* 632

12. — *Tort—Nuisance affecting real estate—Measure of damages—Depreciation of property—Personal discomfort.* *BALTIMORE, & CO., RY. v. FIFTH BAPTIST CHURCH* - 108 U. S. 317 (U.S.)

— *Action for specific performance—Claim for damages.*

*See* *SPECIFIC PERFORMANCE.* 2.

— *Breach of agreement to make road—Requirements of local board.*

*See* *SPECIFIC PERFORMANCE.*

— *Cairns' Act—Breach of covenant—Acquiescence.*  
*See* *COVENANT.* 1.

— *Cairns' Act—Or injunction—Obstruction of light.*

*See* *LIGHT.* 3.

— *Campbell's Act—Action in rem—Admiralty Division.*  
*See* *JURISDICTION.*

— *Collision.*  
*See* *SHIP—COLLISION.* 1—5.

— *Common law right to—Statute imposing penalty.*

*See* *RAILWAY COMPANY.* 5.

— *Contract—Measure of damages.*

*See* *CONTRACT.* 5.

— *Contract—Measure of damages—Loss of market.*

*See* *CARRIER.* 1.

— *Contract for sale of realty—Measure of damages—Misleading conditions.*

*See* *VENDOR AND PURCHASER—CONDITIONS OF SALE.* 3.

— *Divorce—Condonation.*

*See* *HUSBAND AND WIFE—DIVORCE.* 1.

— *Excessive—Libel.*

*See* *DEFAMATION.* 2.

**DEATH—Presumption of—Onus probandi.**

*See* *EVIDENCE.* 10.

**DEBENTURES.**

*See* *COMPANY—DEBENTURES.*

**DEBT—Acknowledgment of—Limitation.**

*See* *LIMITATIONS, STATUTES OF.* 6.

— *Assignment of.*

*See* *ASSIGNMENT OF DEBT.*

**DEBT—continued.**

— Attachment of.

See PRACTICE—ATTACHMENT OF DEBTS.

**DEBTORS' ACT.**

See ARREST.

— Default by administrator—Attachment.

See ADMINISTRATOR. 4.

— Divorce—Wife's costs—Security—Attachment.

See PRACTICE—DIVORCE. 3.

— Judgment summons—Judgment under £50—Appeal.

See BANKRUPTCY—APPEAL. 1.

**DECREE.**

See PRACTICE—JUDGMENT.

**DEED—Creditors' deed.**

See CREDITORS' DEED.

— Disentailing.

See TENANT IN TAIL.

— Mortgage—Recovery of deeds—Purchaser for value without notice.

See MORTGAGE—PRIORITY. 8.

— Rectification—Mistake—Lease.

See MISTAKE.

— Separation deed.

See HUSBAND AND WIFE—SEPARATION DEED.

**DEFAMATION—Libel—Injunction—Publication of Proceedings in Court of Justice.]** The Court will not interfere by injunction to restrain the publication of a report of proceedings in an open Court of Justice, British or foreign, including letters produced in evidence and read, when it is not alleged that the report is unfair. *RIDDELL v. CLYDESDALE HORSE SOCIETY* 12 C. of S. Cas. 976 [(Sc.)]

2. — *Libel—Publication in separate Issues of the same Newspaper—Pleading—Innuendo—Evidence—Misdirection—Excessive Damages.]* The Defendant published in a newspaper, of which he was editor and publisher, several libels of the Plaintiff, who brought an action setting out in the statement of claim, which consisted of eight paragraphs, three libels on which he relied. In the 2nd, 3rd, and 4th paragraphs the innuendoes put on the libels were that the Defendant intended to charge the Plaintiff with being guilty of felony of an unnatural kind; in the 5th, 6th, and 7th, the innuendoes put on the same libels were, that the Defendant intended to charge the Plaintiff with being guilty of an indictable offence of an unnatural kind; and in the 8th paragraph, the libel set out was the same as in the 3rd and 6th paragraphs, but with an innuendo that the Defendant intended to charge the Plaintiff with being guilty of felony. The libel set out in the 4th and 7th paragraphs was in the same words, and was in each paragraph preceded by certain prefatory averments; and it appeared at the trial that the libel set out in the 4th and 7th paragraphs were taken from two different issues of the Defendant's newspaper.

The Defendant by his defence to the first seven paragraphs, denied that he published the words complained of in the defamatory senses alleged, but did not traverse the publication nor plead justification; and his defences to the 8th para-

**DEFAMATION—continued.**

graph were justification and payment of nominal damages into Court. At the trial other passages in the same newspapers, besides those containing the libels complained of, were shewn to the witnesses. The Defendant failed to prove his plea of justification. The jury found a verdict for £3000 damages upon the first seven paragraphs of the statement of claim, and £50 upon the 8th paragraph. The Defendant having obtained a conditional order for a new trial:—*Held* (by May, C.J., Lawson and Johnson, J.J., *diss.* O'Brien, J.), that the verdict and judgment should stand for £3000, but that a *remititur damnum* should be entered as to the £50.

*Held*, by May, C.J., that other passages of the same newspaper might be adduced in evidence to illustrate the meaning of the passages charged to be libellous.

*Held*, by O'Brien, J., that other publications by the Defendant, whether contemporaneous, or precedent, or subsequent, were not admissible in evidence on the question of the sense of the libel unless directly referred to, and in that way virtually made part of the libel complained of; and that they were only admissible to prove malice or deliberation, or upon the question of damages. *BOLTON v. O'BRIEN* 16 L. R. Ir. 97 (since affirmed [by C. A.]

— Libel—Assault on libeller—Mitigation.

See ASSAULT.

— Libel—Criminal information—Newspaper.

See CRIMINAL LAW. 15.

— Libel—Handwriting—Interrogatories.

See PRACTICE—DISCOVERY—INTERROGATORIES. 4.

**DEFENDANT.**

See PRACTICE—PARTIES.

**DEMURRAGE.**

See SHIP—DEMURRAGE.

— **DEMURRER**—Procedure substituted for.

See PRACTICE—POINT OF LAW.

— **DEPOSIT**—Parliamentary—Abandonment of railway.

See RAILWAY COMPANY. 1, 2.

**DESCENT—Inheritance—Ex parte Paternā or Ex parte Maternā—Inheritance Act (3 & 4 Will. 4, c. 106), s. 2.]** A testator who died in 1853 devised as his own an estate which had devolved on his late wife in fee as heiress-at-law of her mother. The devise was to trustees in fee, on trust to pay the rents to the testator's only son and to his two daughters in equal shares, and to the survivors or survivor of them, with remainder on trust for the children of the son and the daughters respectively in fee, with an ultimate remainder unto and to the use of the testator's own right heirs. The son and both the daughters survived the testator, but they all died without issue. The son survived the daughters, and died intestate. He was the heir-at-law of his father, and also of his mother. The testator had also devised real estate of his own to the son, who elected to confirm the will:—

*Held*, by Pearson, J., that the equitable estate, which the son took under the will and by virtue of his election, merged in the legal estate which

**DESCENT**—*continued.*

descended to him from his mother, and that the descent was regulated by the legal estate, and that, consequently, on his death intestate and without issue, the property descended to the heir of his maternal grandmother, who was the last purchaser of the legal estate, and not to his own heir. *Re DOUGLAS. WOOD v. DOUGLAS, or DOUGLAS v. WOOD.* 28 CH. D. 327, 54 L. J. Ch. 421, 52 [L. T. 131, 33 W. R. 390]

**DEVASTAVIT**—Action on—Limitation.

See LIMITATIONS, STATUTE OF. 8.

## — Executor.

See EXECUTOR—ADMINISTRATION. 7.

EXECUTOR—LIABILITIES. 1.

**DEVISE.**

See WILL.

**DILAPIDATIONS**—Assignment of lease—Indemnity.

See LANDLORD AND TENANT—LEASE. 1.

## — Sequestration of benefice.

See ECCLESIASTICAL LAW. 2.

**DIRECTOR OF PUBLIC PROSECUTIONS**—Fiat—Newspaper Libel Act.

See CRIMINAL LAW. 15.

**DIRECTORS.**

See COMPANY—DIRECTORS.

**DISCHARGE**—Of bankrupt.

See BANKRUPTCY—DISCHARGE.

**DISCLAIMER**—By trustee in bankruptcy.

See BANKRUPTCY—DISCLAIMER.

## — Of specification—Amendment of, by way of disclaimer.

See PATENT. 9.

**DISCOVERY**—Documents.

See PRACTICE—DISCOVERY—DOCUMENTS.

## — Interrogatories.

See PRACTICE—DISCOVERY—INTERROGATORIES.

**DISCRETION**—Bankruptcy Court—Order for summary administration.

See BANKRUPTCY—SMALL BANKRUPTCY.

## — Bankruptcy Court—Transfer of proceedings from County Court.

See BANKRUPTCY—RECEIVING ORDER. 1.

## — Bankruptcy Court—Trial of questions as to bankrupt's estate.

See BANKRUPTCY—JURISDICTION. 1.

## — Court—Injunction or damages—Obstruction of light.

See LIGHT. 3, 4.

## — Court—Sale instead of partition.

See PARTITION.

## — Court—Transfer—Administration action—Insolvent estate.

See BANKRUPTCY—ADMINISTRATION. 2.

## — Executors—Conduct of legatee.

See WILL—CONDITION. 1.

## — Judge—Costs.

See PRACTICE—COSTS.

## — Justices—Refusal of certificate of dismissal.

See MANDAMUS. 2.

## — Justices—Refusal to issue summons for perjury.

See JUSTICES. 7.

**DISCRETION**—*continued.*

## — Registrar in bankruptcy—Approval of composition.

See BANKRUPTCY—COMPOSITION. 4.

## — Registrar in bankruptcy—Removal of trustee.

See BANKRUPTCY—TRUSTEE. 3.

## — Trustee's.

See TRUSTEE—LIABILITIES. 9.

TRUSTEE—POWERS.

## — Trustee's—Maintenance of infant.

See INFANT. 5, 7.

**DISENTAILING DEED.**

See TENANT IN TAIL.

**DISMISSAL**—Action—Non-appearance of Plaintiff—Restoration to cause-list.

See PRACTICE—TRIAL. 6.

**DISSOLUTION OF MARRIAGE.**

See HUSBAND AND WIFE—DIVORCE.

PRACTICE—DIVORCE.

**DISTRESS.**

See LANDLORD AND TENANT—DISTRESS.

## — Bankruptcy—Money due to Gas Company—"Rent."

See BANKRUPTCY—DISTRESS.

## — Water rate.

See WATERWORKS CLAUSES ACT. 2.

**DISTRIBUTIONS, STATUTE OF**—"Advancement by portion."

See ADVANCEMENT. 1.

**DISTRICT REGISTRY**—Affidavit—Cross-examination.

See PRACTICE—EVIDENCE. 5.

## — Transfer of action—Company in liquidation.

See PRACTICE—TRANSFER. 2.

**DIVIDENDS**—Guarantee of.

See COMPANY—DIVIDENDS.

**DIVORCE.**

See HUSBAND AND WIFE—DIVORCE.

## — Practice.

See PRACTICE—DIVORCE.

**DOCK WARRANT**—Registration as bill of sale.

See BILL OF SALE—REGISTRATION. 2.

**DOCUMENTS**—Production of.

See PRACTICE—DISCOVERY—DOCUMENTS.

**DOG**—Injury caused by.

See MISCHIEVOUS ANIMAL. 2, 3.

**DOMICIL**—*Abandonment of Domicil of Choice—Probate—Construction of Will expressed in Terms of Foreign Law.*] A Scotchman came to live in England and acquired an English domicil. He afterwards went for two years to France and returned to England, where he soon after died. He left an unsigned will of personal estate, made in 1827, which was drawn by a Scotch lawyer, and contained several technical words of Scotch law. The will was admitted to probate by the English Court. It was held by Pearson, J. (26 Ch. D. 656, 54 L. J. Ch. 96, 50 L. T. 707, 32 W. R. 901, 1884 Dig. cols. 157, 374, 538):— (1), that the grant of the probate was not conclusive that the testator was domiciled in England; (2), that the Scotch domicil of the testator had revived, and that he died a domiciled Scotchman; (3), that the will must be construed according to

**DOMICIL**—*continued*.

Scotch law; and (4), that upon the true construction of the will the Plaintiff was entitled to the estate:—

*Held*, by the Court of Appeal, that whether the testator was domiciled in Scotland or England, and whether the will was to be construed according to English or Scotch law, on the true construction of the will the Plaintiff was entitled to the estate; and therefore the question of domicile was immaterial.

But, *semble*, the testator died domiciled in England, his residence in France not being sufficient evidence of his intention to abandon his English domicile.

*Semble*, also, the use of some technical Scotch terms in his will did not furnish sufficient indication of the intention of the testator to induce the Court to construe it according to Scotch law. **BRADFORD v. YOUNG** 29 Ch. D. 617, 53 L. T. 407, [33 W. R. 860 (C.A.)]

2. — *Abandonment — Acquired Domicil*—*British Subject in Military Service of Crown*.] The rule that a British subject does not, by entering into and remaining in the military service of the Crown, abandon the domicile which he had when he entered into the service, applies to an acquired domicile as well as to a domicile of origin.

An infant, whose father was then living in Jersey, where he had acquired a domicile in place of his English domicile of origin, obtained a commission in the British army in 1854 and joined his regiment in England. He served with the regiment in different parts of the world, and ultimately, in 1863, he died in Canada, where he then was with the regiment. He had in the meantime paid occasional visits to Jersey, while on leave:—

*Held*, by Pearson, J., that he retained his Jersey domicile at the time of his death. *In re MACREIGHT. PAXTON (or PRESTON) v. MACREIGHT*

[30 Ch. D. 165, 55 L. J. Ch. 28, 53 L. T. 146, [33 W. R. 838]

3. — *Unsettled Residence — Territorial Limits of England—Domicil of Origin*.] P. was born in Scotland, in 1792, of Scotch parents. In 1810 he obtained a commission in the army, and immediately proceeded with his regiment on foreign service, and served abroad till 1860, when he retired from the army. From 1860 till his death, he resided in lodgings, hotels, and boarding-houses in various places in England, dying in 1882, intestate and a bachelor, in a private hotel in London, leaving no real estate in England, and no property whatsoever in Scotland. From the year 1810 till his death he never revisited Scotland, and for the last twenty-two years of his life never left the territorial limits of England:—

*Held*, by Chitty, J., that the domicile of the intestate at his death was Scotch. *Re PATIENCE. PATIENCE v. MAIN* 29 Ch. D. 976, 54 L. J. Ch. 897, [52 L. T. 687, 33 W. R. 500]

— Decree as to—*Estoppel*.

*See ESTOPPEL*. 2.

— Testator—*Lower Canada—Construction of will*.

*See COLONIAL LAW*. 6.

— Testator—*Priorities*.

*See EXECUTOR—ADMINISTRATION*. 3.

**DOMICIL**—*continued*.

— Will—*Power—Exercise*.

*See POWER*. 3.

**DONATIO MORTIS CAUSÂ**—*Cheque payable to Donor or Order*.] A cheque payable to the donor or order, and, without having been indorsed by him, given by the donor during his last illness to his son, stands on the same footing as a promissory note or bill of exchange payable to the donor or order, and, following *Veal v. Veal* (27 Beav. 303), will pass to the son by way of *donatio mortis causâ*. So *held*, by Chitty, J. **CLEMENT v. CHEESMAN** 27 Ch. D. 631, 54 L. J. Ch. [158, 33 W. R. 40]

**DOUBLE COSTS**—*Right to, by statute*.

*See PRACTICE—COSTS*. 8.

**DRAIN**—*Public Health Acts*.

*See PUBLIC HEALTH ACTS*. 3, 5, 15, 16.

**DUCHY OF LANCASTER**—*Attorney-General of—English Information, Right to exhibit*.] It is not competent to the Attorney-General of the Duchy of Lancaster to exhibit an information in the High Court of Justice, and the Court will order an information exhibited by him to be taken off the file on the application of the Defendant even after answer put in by the Defendant. So *held*, by Mathew and Day, JJ. **ATTORNEY-GENERAL OF DUCHY OF LANCASTER v. DUKE OF DEVONSHIRE** [14 Q. B. D. 195, 54 L. J. Q. B. 271, 33 W. R. [367]

2. — *Chancery Court of—Jurisdiction—Restraint of Proceedings in Chancery Court of Duchy of Lancaster*. **DYKE v. STEPHENS** (No. 2)

[W. N. (1885) 177]

**DYING DECLARATION**—*Evidence*.

*See CRIMINAL LAW*. 4.

## E.

**EASEMENT**—*Implied Reservation by Grantor—Notice—Building Scheme—Merger of Lease—Surrender*.] By seven simultaneous leases seven plots of land marked respectively A, B, C, D, E, F, and G, and forming together one square block, were demised by the owner to J. with a ground plan on each lease, and with covenants for the erection and maintenance of buildings upon each plot according to certain plans. The leases were granted with a view to the erection upon the whole block of one large edifice, of which the several parts and the internal arrangements were to be connected together for a common use and occupation; so however as to be separable (if desired) into seven separate buildings. J. being in the occupation of the whole, while the buildings were being erected mortgaged C, F, and G, by a sub-lease which recited the building scheme and the original leases of C, F, and G, and contained stipulations for the completion of the buildings on C, F, and G. After the buildings had been substantially completed J. mortgaged E. by a deed which recited the lease of E. and assigned the buildings thereon, subject to the covenants in the lease, to one who had notice of the general plan of the buildings. J. then mort-

**EASEMENT**—*continued.*

gaged B. On J.'s bankruptcy the several mortgagees obtained foreclosure decrees in respect of B, C, and E, respectively:—

*Held*, reversing the decision of the Court of Appeal (25 Ch. D. 559, 50 L. T. 673, 32 W. R. 621, 1884 Dig. col. 159), and restoring the decision of Bacon, V.C., Lord Blackburn dissenting, that though there was no express reservation of the right to light, yet looking at the plans, the covenants in the original leases, and the mortgage deeds, the mortgagees of C and E respectively were by reasonable implication precluded from interfering with the light to the windows in B which looked out upon C and E respectively, and might be restrained accordingly in an action by the mortgagee of B:

*Held*, also, that the mortgagee of B could maintain such an action, although he had surrendered the lease of B and taken a fresh lease from the original lessor; for—without deciding what effect the merger of the original lease might have—whenever the lease of B came to an end either by surrender, forfeiture, or otherwise, the original lessor would have the same rights to light as the mortgagee would have had if the original lease had subsisted.

*Seem*, by the Earl of Selborne, that if on a sale and conveyance of land adjoining a house to be built by the vendor, it is mutually agreed that one of the outer walls of that house may stand wholly or partly within the verge of the land sold and shall have in it particular windows opening upon and overlooking the land sold, and if the house is erected accordingly, the purchaser cannot afterwards build upon the land sold so as to prevent or obstruct the access of light to those windows. **RUSSELL v. WATTS** 10 App. Cas. 590 (H. L., E.)

— Light.

See LIGHT.

— Prescription Act—Right of way.

See PRESCRIPTION.

— Support.

See SUPPORT.

— Taking lands—Hereditaments—"Land."

See LANDS CLAUSES ACT. 14.

**ECCLESIASTICAL LAW**—*Benefice with Cure—Charge*—13 Eliz. c. 20—*Union of Benefices Act, 1860* (23 & 24 Vict. c. 142)—*Compensation payable to retiring Incumbent.*] In pursuance of an Order in Council under the Union of Benefices Act, 1860, uniting two city benefices, certain annuities were granted to the retiring incumbent and his assigns out of the annual income of the united benefice, and made a first charge thereon during the joint lives of himself and the incumbent of the united benefice, so long as he should perform in person, or by substitute to be approved of by the bishop, the duties of curate of the united benefice under the style of vicar in charge, with a provision for the retiring incumbent after the death of the incumbent of the united benefice:—

*Held*, by Chitty, J., that such annuities were not a benefice with cure within 13 Eliz. c. 20, and accordingly could be validly mortgaged by the retired incumbent. **MCBEAN v. DEANE** (or DEAN) 30 Ch. D. 520, 55 L. J. Ch. 19, 33 W. R. 924

**ECCLESIASTICAL LAW**—*continued.*

2. — *Dilapidations—Sequestration of Benefice—Dilapidations of Glebe Buildings—Repairs done by Sequestrator—Ecclesiastical Dilapidations Act, 1871* (34 & 35 Vict. c. 43), ss. 12–16, 72—*Accounts of Sequestrator, Objection to.*] A benefice having been sequestrated under a writ of sequestration in an action, an inspection of the glebe buildings by the diocesan surveyor was directed by the bishop, and a report made by such surveyor under the Ecclesiastical Dilapidations Act, 1871. The report estimated the cost of the necessary repairs to the buildings at £140, and no objections were taken to such report under sect. 16 of the Act. The sequestrator, being subsequently of opinion that the repairs provided for by the surveyor's report were inadequate, expended on the repairs of the buildings a much larger sum than £140. No inspection or report, except as before mentioned, was ordered by the bishop or made by the surveyor:—*Held*, by Coleridge, C.J., and Mathew, J., that the sequestrator had no authority to expend on repairs out of the proceeds of the benefice a larger sum than that estimated as necessary by the surveyor's report under the Ecclesiastical Dilapidations Act, 1871, and that such expenditure must be disallowed. **KIMBER v. PARAVICINI** 15 Q. B. D. 222, 54 L. J. Q. B. 471, [53 L. T. 299, 33 W. R. 907]

— Advowson.

See ADVOWSON.

— Particulars—Criminal suit.

See PRACTICE—ECCLESIASTICAL LAW.

**EDUCATION**—Board school.

See ELEMENTARY EDUCATION ACTS.

— Infant—Jurisdiction.

See INFANT. 3.

**EJECTMENT.**

See LANDLORD AND TENANT—RE-ENTRY.

— Claim—General allegation of Plaintiff's derivative title.

See PRACTICE—PLEADING. 4.

**ELECTION**—*Conversion—Election to take Personally as Realty—Real Estate in Lease with option to Tenant to purchase Reversion.*] A testator by his will gave his real estate and the residue of his personal estate to trustees, on trust to sell his real estate, and to convert and get in his residuary personal estate, and to stand possessed of the moneys arising from both, on trust to invest the same, and to pay the income to his wife during her life or widowhood, and, after her death or second marriage, upon trust to divide the trust funds equally between such of his children as should be living at his death, and the issue of such of them as might be then dead. The testator died in 1869. The wife and two infant children survived him. There were no issue of any deceased child. Both the children died before the wife unmarried and intestate, the one who died last dying in 1876. The wife did not marry again, and she died in 1885 intestate. The only real estate of the testator was a house, of which he had in 1869 agreed to grant a lease for twenty years, with an option to the tenant to purchase the reversion at any time during the term. At the death of the widow this option

**ELECTION**—*continued.*

had not been exercised, and the house had not been sold by the trustees. After the deaths of the children the widow continued in receipt of the rent of the house:—

*Held*, by Pearson, J., that, by reason of the tenant's option to purchase the house, the widow's continued receipt of the rent was no evidence of an election by her to take the property as real estate, and that on her death it descended as personalty to her next of kin.

*Re Gordon* (6 Ch. D. 531) distinguished. *Re Lewis. Foxwell v. Lewis* - 30 Ch. D. 654, [53 L. T. 387, 34 W. R. 150]

2. — *Married Woman—Restraint on Anticipation.* In the case of a married woman to whom an interest with a restraint on anticipation attached thereto is given by the same instrument as that which gives rise to a question of election, the doctrine of election does not apply, as the value of her interest in the property to be relinquished by way of compensation has, by the terms of the instrument, been made inalienable. *Re Wheatley. Smith v. Spence* 27 Ch. D. 606, [54 L. J. Ch. 201, 51 L. T. 681, 33 W. R. 275]

3. — *Married Woman—Settlement on Marriage of Female Infant—Life Interest for Separate Use—Restraint on Anticipation—Covenant by her to settle after-acquired Property—Bequest to her after Twenty-one during Coverture for her Separate Use—Voidable Covenant—Approbation and Reprobation—Sequestration of Life Interest.* The doctrine of election is founded upon the rule that a person cannot take under and against the same instrument, and the equity is not that the person electing to take against the instrument shall be required to assign, but that he shall not be permitted to take, the benefit given to him thereunder.

Accordingly the Court is not prevented from enforcing this rule by the incapacity of the person so electing to alienate the interest taken under the settlement. And upon this principle the Court can, notwithstanding a restraint on anticipation attaching thereto, sequester the life interest of a married woman electing to take against a settlement until compensation has been made thereout to the persons disappointed under the settlement by such election.

Upon the marriage of a female infant in 1860 personalty was settled by her father upon trusts under which she took the first life interest for her separate use without power of anticipation, and the settlement contained a covenant by her to settle all her after-acquired property upon trusts under which the husband took the first life interest. In 1883 and during the coverture personal property was bequeathed to her for her separate use, and she chose to avoid her covenant and to take this property instead of bringing it into the settlement. She also contended that she was entitled to keep the life interest under the settlement, which she was restrained from anticipating, without making compensation thereout to the persons disappointed under the settlement, upon the ground that as she was restrained from alienating such life interest the Court could not impound it:—

*Held*, by Kay, J., that as the married woman

**ELECTION**—*continued.*

had elected to defeat one of the provisions of the settlement, she was not competent to take a life interest under another of them, and that, notwithstanding the restraint on anticipation, the income which would have been payable to her if she had not so elected, ought to be applied in making compensation to the persons disappointed by her election for the benefits of which they had been thereby deprived, and that the trustees of the settlement must retain and apply the same accordingly. *Smith v. Lucas* (18 Ch. D. 531) and *In re Wheatley* (*supra*) dissented from. *Re Vardon's Trusts* - 28 Ch. D. 124, 54 L. J. Ch. [244, 51 L. T. 884, 33 W. R. 297]

[*Rev. by C.A., W. N. (1885) 224.*]

4. — *Married Woman—Stock belonging to, Standing in Joint Names of Husband and Wife—Bequest by Husband of Life Interest therein to Wife.* C. by his will, after a legacy of £3000 to his wife, gave all the residue of his property "including therein the money in my banking account in the Bank of England, and money in the public funds, and whether standing in my name alone, or jointly with my said wife," and all his shares and interest in any public company, and other effects, to his wife for her life. At the date of the will, and at the time of C.'s death, there was only one sum (of £7110 consols) standing in the joint names of C. and his wife. This stock had by a previous will been bequeathed to the wife, subject to two executory gifts over, which did not take effect, one in favour of her children, if any, and the other of her husband, if he survived. The stock had been received by C., and by him transferred into their joint names. After C.'s death the wife received the income of all the residue, including the £7110, but made no attempt to deal with the stock as her own property. There was, however, no evidence to shew that she knew what her rights were. On her death her representatives claimed the stock. The question was, whether they were bound, under the doctrine of election, to compensate the residuary legatees, who would be disappointed by their taking the stock, to any and what extent. *Held*, by Kay, J., that the testator intended the stock to pass, and was not dealing only with his right of survivorship; that he affected to give property belonging to his wife, and consequently the doctrine of election applied to both the wife and her representatives claiming under her; and that her representatives could only take the stock upon the terms of compensating the disappointed residuary legatees to the extent of the legacy of £3000, and of the amount actually received by the wife in respect of her life interest and in the testator's own property. *Re Carpenter. Carpenter v. Disney* [51 L. T. 773.]

5. — *Married Woman—Void Will—Heir.* A married woman who was entitled to some shares in a colliery for life for her separate use, with a power of appointment by will, and also to realty in fee simple not for her separate use, by will made in Feb. 1880, appointed the shares in favour of her heir and other children, and purported to devise the realty away from the heir. She died in June, 1880, leaving her husband surviving.

**ELECTION—continued.**

*Held*, by Kay, J., that the will being void as to the realty, the heir was not put to his election as between the realty and his interest in the colliery. *Re DE BURGH LAWSON. DE BURGH LAWSON v. DE BURGH LAWSON* - 34 W. R. 39, [55 L. J. Ch. 46, 53 L. T. 522, W. N. (1885) 174]

6. — *Power — Appointment to Object of Power subject to Charge—Advancement.* R., having a testamentary power to appoint lands to his male issue in such shares and proportions as he should direct, devised certain of the lands to his eldest son J. (who survived him), "to be chargeable with £2000, borrowed for J.'s sole use," and which R. in a subsequent part of his will stated that he had paid. R. by his will gave benefits out of his own property to all the objects of the power, and directed that certain portions of his estates should be sold or charged, as by his will provided, and the proceeds applied, together with the £2000 borrowed for his son J., and which he stated he had paid, to form a fund for payment of his debts and legacies:—

*Held*, (1st), that the devise to J. subject to the £2000 was not a case of a gift absolute, with a superadded attempt to modify it, within the principle of *Carver v. Bowles* (2 Russ. & Myl. 301), but the gift of a certain portion only of the interest in the lands; the deduction of the £2000 charge being necessarily incorporated with the gift, and that, therefore, J. took the lands subject to the charge of £2000. *White v. White* (22 Ch. D. 555, 52 L. J. Ch. 232, 48 L. T. 151, 31 W. R. 451) followed:—

*Held* (2ndly), that the statements by R. in his will, that he had borrowed the £2000 for J.'s sole use, and had paid the debt, being statements subsequent to the advance, were inadmissible to shew that R. intended thereby to become a purchaser *pro tanto* of J.'s interest in the property subject to the power.

*Held* (3rdly), that the charge of £2000 not being well appointed, a case of election arose between the objects of the power and the persons entitled to the general fund of which R. intended that the £2000 should be part. *KING v. KING* [13 L. R. Ir. 531]

— Post-nuptial settlement—Restraint on anticipation—Compensation.

*See SETTLEMENT—AFTER-ACQUIRED PROPERTY.* 4.

— Special power—Appointment to persons not objects.

*See POWER.* 5.

**ELECTION, MUNICIPAL.**

*See MUNICIPAL CORPORATION.* 1—5.

**ELEMENTARY EDUCATION ACTS — Board School—School Hours—Home Lessons—Unlawful Detention of Scholar—Assault—Elementary Education Acts, 1870 (33 & 34 Vict. c. 75) and 1876 (39 & 40 Vict. c. 79).]** The Elementary Education Acts, 1870 and 1876, do not authorize the setting of lessons to be prepared at home by children attending a board school. The detention at school after school hours of a child for not doing home lessons is therefore unlawful, and renders

**ELEMENTARY EDUCATION ACTS—continued.**

the master who detains the child liable to be convicted for an assault. *HUNTER v. JOHNSON* [13 Q. B. D. 225, 53 L. J. M. C. 182, 51 L. T. 791, [32 W. R. 857, 48 J. P. 683, 15 Cox, C. C. 600]

2. — *Board Schools—Non-payment of Fees for Tuition—Causing Child to attend School, what is—Bye-Law — Penalty—Elementary Education Act, 1870 (33 & 34 Vict. c. 75) s. 74.]* The London School Board made bye-laws, under sect. 74 of the Elementary Education Act, 1870, providing that the parent of every child, if not less than five nor more than thirteen years of age, should cause such child to attend school unless there was a reasonable cause for non-attendance, and that every parent who should not observe or neglect any bye-law should be liable upon conviction to a penalty.—The Respondent sent his child, aged ten, to one of the Board's schools, but did not pay, though he was able to pay, the weekly fees for tuition prescribed by the School Board with the consent of the Education Department. The child was admitted to the school, and received instruction therein:—*Held*, by Coleridge, C.J., Grove, Denman, and Mathew, JJ., that the Respondent had not caused his child to attend school within the meaning of the bye-laws, and therefore was liable to the penalty. *LONDON SCHOOL BOARD v. WOOD* - 15 Q. B. D. 415, [54 L. J. M. C. 145]

3. — *Contract with School Board not under Seal — Appointment of Architect — Orders to—Minutes of Board duly signed—Validity—33 & 34 Vict. c. 75, s. 30, sub-ss. 1, 4, 6: sect. 35—Third Schedule, 7.]* By 33 & 34 Vict. c. 75 (the Elementary Education Act, 1870, s. 30, sub-s. 1), "a school board shall be a body corporate . . . having a perpetual succession and a common seal . . . "sub-s. (4) any minute made of proceedings at meetings of the school board, if signed by . . . the chairman . . . shall be receivable in evidence in all legal proceedings without further proof . . . sub-s. (6) the rules contained in the third schedule shall be observed.—By sect. 35 a school board may appoint a clerk and a treasurer and other necessary officers . . . By the Third Schedule, 7, the appointment of any officer of the board may be made by a minute of the board, signed by the chairman of the board, and countersigned by the clerk (if any) of the board, and any appointment so made shall be as valid as if it were made under the seal of the board.—By a minute signed by the chairman of a school board and countersigned by the clerk, the Plaintiff was appointed architect of the board, and under orders given by subsequent minutes so signed and countersigned and communicated to him, he prepared plans for the board:—*Held*, by Mathew, J., that by virtue of the provisions of the Act he was entitled to recover payment for his services although the appointment and orders were not under seal. *SCOTT v. GREAT AND LITTLE CLIFTON SCHOOL BOARD* - 14 Q. B. D. 500, 52 L. T. 105, [33 W. R. 368, 1 C. & E. 435]

— Clerk of School Board—Poor Law guardian—Disqualification.

*See POOR LAW.* 1.

— School Board—Poor-rate.

*See POOR-RATE.* 2.

**EMBARRASSING PLEADINGS.***See* PRACTICE—PLEADINGS.**EMPLOYER AND WORKMAN.***See* MASTER AND SERVANT.**EMPLOYERS' LIABILITY ACT, 1880.***See* MASTER AND SERVANT. 9—15.**ENDOWED SCHOOLS ACT**—Denominational school—Powers of Commissioners.*See* SCHOOL.**ENTRY**—For purpose of distraining.*See* LANDLORD AND TENANT—DISTRESS. 2.**ENTRY, RIGHT OF**—Purchase of—"Pretended" title.*See* VENDOR AND PURCHASER—TITLE. 6.**EQUITABLE ASSIGNMENT**—Order for payment of money—Specific fund.*See* ASSIGNMENT OF DEBT. 1.**EQUITABLE EXECUTION**—By appointment of receiver.*See* PRACTICE—RECEIVER. 2, 3.**EQUITABLE MORTGAGE**—Agreement to charge—Power of attorney.*See* MORTGAGE—CONTRACT. 1.

## —Priority.

*See* MORTGAGE—PRIORITY. 1—3.

## —Sale instead of foreclosure.

*See* MORTGAGE—FORECLOSURE. 2, 3.**EQUITY TO A SETTLEMENT.***See* SETTLEMENT—EQUITY TO A SETTLEMENT.**ERROR.***See* MISTAKE.**ESTATE IN REALTY**—Devise of.*See* WILL—ESTATE IN REALTY.

**ESTOPPEL**—*Judgment—Action in Probate Division—Judgment in Chancery Division—Revocation of Probate—Forgery.* In an action in the Probate Division T. & G. propounded an earlier and P. a later will. The action was compromised, and by consent verdict and judgment were taken for establishing the earlier will. Subsequently P. discovered that the earlier will was a forgery, and in an action in the Chancery Division, to which T. & G. were parties, obtained the verdict of a jury to that effect, and judgment that the compromise should be set aside. In another action in the Probate Division for revocation of the probate of the earlier will:—*Held*, affirming the decision of the President of the Probate Division (9 P. D. 70, 53 L. J. P. 58), that T. & G. were estopped from denying the forgery. *PRIESTMAN v. THOMAS* [9 P. D. 210, 53 L. J. P. 109, 51 L. T. 843, [32 W. R. 842 (C.A.)]

2. — *Judgment—Res Judicata—Finding on Issues on which Judgment in rem is founded.* A native of Chili made his will in London, in November, 1859, and died in February, 1860. A caveat having been entered on behalf of the testator's daughter, the will was propounded by the executors in solemn form, the executors alleging that the testator was domiciled in England. The daughter alleged that the testator was domiciled in Chili, and that his will was not executed ac-

**ESTOPPEL**—*continued.*

cording to Chilian law. In July, 1860, the judge of the Probate Court made a decree by which he pronounced for the validity of the will, found that the testator was domiciled in England, and decreed probate to the executors. In September, 1860, the executors filed a bill against the residuary legatee and the pecuniary legatee for administration of the estate, in which a decree was made in November, 1860. In 1862, the daughter filed a bill against the executors, alleging that the testator was a domiciled Chilian, that his will being executed in England, according to English law, was good by the law of Chili, but so far only as the testator could by the law of Chili dispose of his property by will; that according to that law he could only dispose by will of one-fourth of his personal estate, and that the other three-fourths belonged to the Plaintiff. The executors by answer set up the decree of the Probate Court as a bar, and no further steps were taken in the suit. In 1877, an order was made staying proceedings in the latter suit, and in another suit, but giving liberty to any of the parties to apply to add to the decree in the former cause all accounts and inquiries necessary to determine all questions in the suits so stayed. Pursuant to this leave, the daughter and her husband applied to add to the decree inquiries as to the legitimacy of the daughter and the domicile of the testator, and as to what part of his personal estate he could according to the Chilian law dispose of by will, and an order was made in 1878 directing inquiries as to the legitimacy, the rest of the application to stand over. In 1881 and 1882 orders were made transferring the conduct of the cause from the Plaintiff, the surviving executor, to the residuary legatee, dispensing with service of any notices or proceedings on the Plaintiff, and appointing the residuary legatee to represent the estate of the testator in the cause. In 1884 the application for an inquiry as to domicile was renewed against the residuary legatee, but without notice to the Plaintiff, and Bacon, V.C., made an order directing the inquiry as asked. The residuary legatee appealed:—

*Held*, that the decree of the Probate Court was not conclusive *in rem* as to the domicile, for that it did not appear that the decree was necessarily based on the finding as to domicile. And *quære*, whether the findings on which a judgment *in rem* is based are in all cases conclusive against the world.

*Held*, further, that the finding by the Probate Court as to domicile was not binding *inter partes* as between the daughter and the residuary legatee, for that it was a finding between the daughter and the executors, that the executors could not by litigating in that suit a question of domicile, which it was not necessary to decide for the purposes of the suit, conclude the residuary legatee as to the extent of the testator's power of disposing of his property, and did not represent him for that purpose, and that as the residuary legatee was not bound, the daughter could not be bound, since estoppel must be mutual.

*Held*, therefore, that the inquiry was properly directed, and this notwithstanding that the application had not been served on the executor.

An application by counsel for the executor for



**ESTOPPEL—continued.**

leave to be heard on the appeal was refused. *DE MORA v. CONCHA* - 29 Ch. D. 268, 54 L. J. Ch. 532, [52 L. T. 282, 33 W. R. 846, 49 J. P. 548 (C.A.)]

3. — *Judgment—Res Judicata—Cross Actions in English and Irish Courts—Pleading.* *Held*, by Pearson, J., that in order to raise the defence of *res judicata* it is not necessary to set forth in detail in the defence the pleadings in the other action the judgment in which is said to operate as *res judicata*, but, in order to judge whether the same questions were at issue in the first action as in the second, the Court will look at the pleadings in the first action, though they were not set forth in the defence in the second action. Whether a judgment obtained in one action before the trial of another can operate by way of estoppel as *res judicata*, unless the judgment was obtained before the issue of the writ in the second action, *quære*.

(On appeal by the Defendant an order was taken by arrangement.) *HOUSTON v. MARQUIS OF SLIGO* (No. 1) - 29 Ch. D. 448, 52 L. T. 96

4. — *Judgment—Injunction—Res Judicata Second Action for same Cause of Action—Prayer for "further or other Relief"—Chancery Amendment Act, 1858 (21 & 22 Vict. c. 27), s. 2—Judicature Act, 1873, s. 24, sub-s. 7.* In March, 1881, the Plaintiff handed to one Bird, a broker, shares in a mining company, with a transfer signed (a blank being left for the name of the transferee), for the purpose of sale. Bird died; and it was then discovered that he had, without the knowledge or authority of the Plaintiff, lodged the shares with the Defendant's firm as security for an advance. Having received notice from the company that they were about to register the shares in the name of the Defendant, the Plaintiff commenced an action in the Chancery Division of the High Court to restrain the Defendant's firm and the company from parting with the shares or registering the Defendant as transferee, concluding with the usual prayer for "such further or other relief as the nature of the case might require." On the 23rd of February, 1882, the Defendants in that action consented to an order for the delivery up of the shares to the Plaintiff forthwith. The order directed that, "upon delivery of the deed or form of transfer and the securities representing the same, and upon payment of costs to the Plaintiff and the mining company, all proceedings in the said Chancery action should be stayed." The shares were not delivered up to the Plaintiff until the 28th of April, 1882, when they were sold at a considerable loss. In an action against the Defendant in the Queen's Bench Division to recover damages for this detention, the jury found that the Plaintiff did not authorize Bird to pledge the shares for his own debt, or lend them to him for that purpose:—*Held*, that the Plaintiff was estopped by the consent order made in the Chancery action on the 23rd of February, 1882, from recovering in this action damages for such detention, and that the Defendant was not responsible for the detention of the shares by the mining company after the order had been made in the suit in the Chancery Division. *SERRAO v. NOEL*

[15 Q. B. D. 549 (C.A.)]

**ESTOPPEL—continued.**

5. — *Judgment—County Court—Counter-claim—Action in High Court for same cause of Action—Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 89, 90—(See now Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 18.)* The Defendant in a county court action relied upon a cause of action by way of counter-claim, upon which he obtained a verdict for an amount beyond the county court jurisdiction. Judgment was entered for the Defendant, but no relief was given in respect of the balance in excess of the Plaintiff's claim:—

*Held*, by Mathew, J., that the Defendant was not estopped from afterwards bringing an action in the High Court upon the same cause of action.

The Defendant in the High Court is in such a case estopped by the verdict and judgment of the county court from denying the cause of action of the Plaintiff in the High Court, and the only question to be decided in the High Court is the amount of damages. *WEBSTER v. ARMSTRONG*

[54 L. J. Q. B. 236]

6. — *Judgment.* Dismissal of suit for want of jurisdiction no bar to a second suit for same cause of action. *SMITH v. MCNEAL* 109 U. S. 426

— Assent of creditor to composition.

*See* BANKRUPTCY—COMPOSITION. 5.

— Conduct—Joint guarantee—Death of guarantor.

*See* PRINCIPAL AND SURETY. 3.

— Conduct—Mutual insurance—No stamped policies.

*See* INSURANCE, MARINE. 5.

— Conduct—Patent—Assignment by trustee in bankruptcy of patentee.

*See* PATENT. 7.

— Conduct—Payment of rent—*Jus tertii*.

*See* LANDLORD AND TENANT—RENT.

— Foreign judgment.

*See* FOREIGN JUDGMENT.

— Judgment by consent.

*See* PRACTICE—ADMIRALTY. 9.

— Judgment—Separate actions in respect of same wrongful act.

*See* JUDGMENT. 2, 3.

**EVIDENCE** — Account books — Memorandum book, containing entry of a single transaction only. *RYAN v. DUNPHY* 47 Amer. R. 355 (U.S.)

2. — *Admission by Master of Ship—Letter.* A letter from the master of a ship to her owners is admissible as evidence against them in regard to the facts therein stated; but the opinion of the master in such a letter is not evidence. *THE "SOLWAY"* - 10 P. D. 137, 54 L. J. P. 83

3. — *Baptismal Register—Entry of Date of Birth—Declarations of deceased Father.* Although an entry in a baptismal register by the officiating clergyman of the day when the baptized child was born furnishes no proof *per se* that the child was born on the day stated, the entry will not be rejected altogether as an item of evidence upon an inquiry as to the legitimacy, from its birth before or after the marriage of its reputed parents, of the child in question.

Declarations by a reputed father contained in business letters written by one of his daughters

**EVIDENCE—continued.**

in his name and under his dictation admitted as evidence after his death of the date of their birth upon the question of their legitimacy. *Re* TURNER. GLENISTER v. HARDING - 29 Ch. D. 985.

[54 L. J. Ch. 1089, 53 L. T. 528]

4. — *Declarations of deceased Persons—Illegitimacy.* Declarations by a deceased person as to his own illegitimacy, are admissible in evidence. *Procurator-General v. Williams* (31 L. J. P. M. & A. 157) followed. *Re* PERTON'S ESTATE. PEARSON v. ATTORNEY-GENERAL W. N. (1885) [164]

5. — *Entry against Interest.* The representative of a deceased mortgagee brought in 1884 a foreclosure action against the mortgagor, who pleaded the Statutes of Limitations. There was no evidence that any interest had been paid since 1866, except an entry in the books of the mortgagee of £50 as paid in 1878 by the mortgagor for rent and interest:—

*Held*, by North, J., that though as an acknowledgment of money received it was against the interest of the person who made the entry, yet as it would prove the revival of a simple contract debt then barred, it was for his interest, and therefore could not be received as evidence on behalf of his representatives. NEWBOULD v. SMITH 29 Ch. D. 582, 53 L. T. 137, 33 W. R. 690

6. — *Hearsay—Pedigree—Proof of Birth—Declaration of deceased Parent.* The rule which admits hearsay evidence in pedigree cases is confined to the proof of pedigree and does not apply to proof of the facts which constitute a pedigree, such as birth, death, and marriage, when they have to be proved for other purposes. —Therefore in an action for goods sold, to which the defence was infancy, an affidavit stating the date of the Defendant's birth, which had been made by his deceased father in an action to which the Plaintiff was not a party, was held inadmissible as evidence of the age of the Defendant in support of his defence. HAINES v. GUTHRIE [13 Q. B. D. 818, 53 L. J. Q. B. 521, 51 L. T. 645, [33 W. R. 99, 48 J. P. 756 (C.A.)]

7. — *Hearsay—Pedigree—Time of birth* provable by reputation or hearsay. SWINK v. FRENCH - 47 Amer. R. 277 (U.S.)

8. — *Judgment.* A judgment may be proved by the production of a duly certified copy of an entry in the entry-book of judgments of the Court in which the judgment was recovered. *Ex parte* ANDERSON. *Re* TOLLEMACHE 14 Q. B. D. [606, 54 L. J. Q. B. 383, 52 L. T. 786 (C.A.)]

9. — *Opinions on Religious Subjects.* The fact that a man of full age holds certain views on religious subjects at one time is evidence that he holds the same views four years later. ATT.-GEN. v. BRADLAUGH - 1 C. & E. 440

10. — *Presumption—Death—Absence for seven years—Onus probandi.* HOYT v. NEWBOLD [46 Amer. R. 757 (see note on p. 761) (U.S.)]

11. — *Presumption—Woman past Child-bearing—Woman, aged 52, and married 10 years without having any Children.* GRAHAM v. PARSONS - W. N. (1885) 146

12. — *Privileged Communication—Communi-*

**EVIDENCE—continued.**

*nications between Solicitor and Client—Solicitor, Disclosure by—Criminal Law.* All communications between a solicitor and his client are not privileged from disclosure, but only those passing between them in professional confidence and in the legitimate course of professional employment of the solicitor. Communications made to a solicitor by his client before the commission of a crime for the purpose of being guided or helped in the commission of it, are not privileged from disclosure.—C. and R. were partners under a deed of partnership. M. brought an action against R. & Co., and obtained judgment therein, and issued execution against the goods of R. The goods seized in execution were then claimed by C. as his absolute property under a bill of sale executed in his favour by R. at a date subsequent to the above-mentioned judgment. An interpleader issue was ordered to determine the validity of the bill of sale, and upon the trial of this issue, the partnership deed was produced on C.'s behalf, bearing an indorsement purporting to be a memorandum of dissolution of the said partnership, prior to the commencement of the action by M. Subsequently C. and R. were tried and convicted upon a charge of conspiring to defraud M., and upon that trial the case for the prosecution was, that the bill of sale was fraudulent, that the partnership between R. and C. was in truth subsisting when it was given, and that the memorandum of dissolution indorsed on the deed was put there after M. had obtained judgment, and fraudulently ante-dated, the whole transaction being, it was alleged, a fraud intended to cheat M. of the fruits of his execution. Upon the trial a solicitor was called on behalf of the prosecution to prove that after M. had obtained the judgment C. and R. together consulted him as to how they could defeat M.'s judgment, and as to whether a bill of sale could legally be executed by R. in favour of C. so as to defeat such judgment, and that no suggestion was then made of any dissolution of partnership having taken place. The reception of this evidence being objected to, on the ground that the communication was one between solicitor and client, and privileged, the evidence was received, but the question of whether it was properly received was reserved for this Court:—*Held*, by the Court (Grove, J., Pollock and Huddleston, BB., Hawkins, Lopes, Stephen, Watkin Williams, Mathew, Day, and Smith, JJ.), that the evidence was properly received.—*Cromack v. Heathcote* (2 B. & B. 4); *Rez v. Smith* (1 Phil. & Arn. on Evidence, 118); and *Doe v. Harris* (5 C. & P. 592) overruled.—*Follett v. Jefferyes* (1 Sim. (N.S.) 1); *Russell v. Jackson* (9 Hare, 387); and *Gartside v. Outram* (26 L. J. Ch. 113), approved. REG. v. COX AND RAILTON 14 Q. B. D. 153, 54 [L. J. M. C. 41, 52 L. T. 25, 33 W. R. 396, 49 J. P. [374, 15 Cox, C. C. 611 (C.C.R.)]

13. — *Proceedings in Irish Action—Report of Judge.* *Held*, by the Court of Appeal, that a report made by an Irish Judge to a Divisional Court in Ireland to be used on an application to set aside the verdict, was evidence in an English action between the same parties of what took place at the trial and what the Judge decided.

An affidavit verifying the shorthand note of the

**EVIDENCE—continued.**

judgment in the action pleaded as *res judicata* was also admitted. *HOUSTOUN v. MARQUIS OF SLIGO* (No. 1) - 29 Ch. D. 448 (C.A.)

14. — *Res gestæ*—Declarations by person fatally injured by railway train, half-an-hour after the accident, as to circumstances thereof. *WALDELE v. NEW YORK CENTRAL RY. CO.*

[47 Amer. R. 41 (U.S.)]  
See also ALABAMA, &C., RY. CO. v. HAWK, *ib.* [403]

15. — Scientific books—Contents cannot be stated in evidence or read on argument to jury. *BOYLE v. STATE* - 46 Amer. R. 41 (U.S.)

— Acceptance of arrears of rent.

See LANDLORD AND TENANT—HOLDING OVER. 1.

— Admission by deceased against interest.

See BANKRUPTCY—PROOF. 3.

— Ambiguity in will—Evidence to explain.

See WILL—CONSTRUCTION. 2, 3, 9.

— Bankruptcy proceedings.

See BANKRUPTCY—EVIDENCE.

BANKRUPTCY—EXAMINATION.

— Committal for non-payment of instalments—Debtors' Act.

See ARREST. 3.

— Criminal cases.

See CRIMINAL LAW. 3—6.

— Custom—Broker's personal liability.

See PRINCIPAL AND AGENT. 1.

— Custom of manor.

See COPYHOLD. 1.

— Damage action—Engineer's log.

See PRACTICE—ADMIRALTY. 7.

— Debt—Judgment after act of bankruptcy.

See BANKRUPTCY—PROOF. 5.

— Dog worrying sheep.

See MISCHIEVOUS ANIMAL. 2.

— Domicil.

See DOMICIL.

— Double portions—Satisfaction.

See ADVANCEMENT.

— Fishing, right of—Proof of execution of lease.

See FISHERY. 2.

— Foreclosure action—Affidavit of non-payment.

See MORTGAGE—FORECLOSURE. 4, 5.

— House of Commons—Oath of allegiance.

See OATH.

— Libel—Other publications by defendants.

See DEFAMATION. 2.

— Malicious prosecution—Absence of reasonable and probable cause.

See MALICIOUS PROSECUTION.

— Mandamus to justices to rehear case—Pretended rehearing.

See JUSTICES. 4.

— Negligence.

See NEGLIGENCE.

— Negligence—Injury to workman.

See MASTER AND SERVANT. 10.

**EVIDENCE—continued.**

— Negligence—Railway company—Gate by side of line.

See RAILWAY COMPANY. 3.

— Nuisance—Smoke—Construction of chimney and furnace.

See PUBLIC HEALTH ACTS. 8.

— Patent—Utility—Sufficiency of specification.

See PATENT. 10.

— Pedigree—Family reputation.

See WILL—ESTATE IN REALTY. 3.

— Practice.

See PRACTICE—EVIDENCE.

— Presumption—Rebuttal—Bequest to executor.

See WILL—EXECUTORS. 1.

— Presumption of lost grant—Market—Usage.

See MARKET. 3.

— Report of official receiver—Application for summary administration.

See BANKRUPTCY—SMALL BANKRUPTCIES.

— Revocation of will—Intention.

See WILL—REVOCATION. 6.

— Settlement of pauper.

See POOR LAW. 4.

— Title—Payment of rent—*Jus tertii*.

See LANDLORD AND TENANT—RENT.

— Winding up.

See COMPANY—WINDING-UP. 4—7.

— Witness—Privilege—Solicitor.

See SOLICITOR—PRIVILEGE.

**EXAMINATION.**

See PRACTICE—EVIDENCE.

— Alleged lunatic—Jurisdiction of justices.

See LUNATIC. 1.

— Bankruptcy proceedings.

See BANKRUPTCY—EXAMINATION.

— Married woman—Consent—Settled Estates Acts.

See SETTLED ESTATES ACTS. 1—3.

— Winding-up.

See COMPANY—WINDING-UP. 5—7.

**EXECUTION**—Equitable, by appointment of receiver.

See PRACTICE—RECEIVER. 2, 3.

— Judgment obtained by executors—Death of co-plaintiff.

See PRACTICE—PARTIES. 6.

— Stay of.

See PRACTICE—STAYING PROCEEDINGS.

**EXECUTOR:—**

I. ACTIONS (BY OR AGAINST).

II. ADMINISTRATION.

III. DE SON TORT.

IV. LIABILITIES.

V. POWERS.

**I. EXECUTOR—ACTIONS (BY OR AGAINST)—**

*Action by Executrix and her Husband—Bankruptcy of Husband—Dismissal of Action with Costs—Liability of Husband for the Costs—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 31.] A feme covert sued as executrix, and (the action*

**II. EXECUTOR—ADMINISTRATION—*contd.***

be paid out of his estate. After payment of his debts, the estate was insufficient to pay the annuities in full:—

*Held*, by Pearson, J., that (after payment of costs) the fund must be apportioned as above between the two annuitants; that the legacy duty payable on the sum apportioned to the second annuitant must be deducted from the whole fund, and the balance then divided in the same proportion between the two annuitants.

It is the settled rule that the plaintiff in a legatee's administration action is, when the estate is insufficient to pay the legacies in full, entitled to receive his costs out of the fund as between solicitor and client, and this rule applies even when there is a contest between him and another legatee as to the proper mode of dividing the fund. *Re WILKINS. WILKINS v. ROTHERHAM*

[27 Ch. D. 703, 54 L. J. Ch. 188, 33 W. R. 42

2. — *Capital and Income—Bonus Dividend—Tenant for Life and Remainderman.*] A testator died in 1876, having bequeathed his residuary personal estate to his executor T. B. in trust for the testator's wife for life, and after her death to T. B. Part of the residuary estate consisted of 600 shares in a company whose directors had power before recommending a dividend, to set apart out of the profits such sum as they thought proper as a reserved fund, for meeting contingencies, equalizing dividends, or repairing or maintaining the works. The shares were £10 shares on which £7 10s. per share had been paid up. In 1880 the reserved fund was £100,000, which had been made up in the testator's lifetime, and there was also an "undivided profit" fund of £36,070, more than half of which arose from profits earned in his lifetime. In September, 1880, the directors proposed to add to the "undivided profit" fund £7246, and recommended that the £100,000, and £38,000 out of the undivided profit fund, should be distributed as a "bonus dividend" of £2 10s. per share, and that there should be created new £10 shares amounting in number to one-third of the original shares, so that one new share might be allotted to each shareholder for every three original shares which he held, £7 10s. per share to be paid on allotment, which £7 10s. the bonus would enable him to pay. At a general meeting these recommendations were adopted, and special resolutions were passed, authorizing the directors, with the sanction of a general meeting, to declare a bonus out of the reserved and undivided profit fund, and providing for the issue and allotment of new shares. These resolutions were confirmed at a subsequent meeting, at which an ordinary resolution was passed for paying the bonus of £2 10s. per share. The warrant for the bonus had at its foot a memorandum to be signed by the shareholder directing the registrar of the company to apply the bonus in payment of the call. T. B. accepted the 200 new shares allotted to him, and signed the memorandum, and the new shares were registered in his name. After the death of the testator's wife in 1883, the question was raised whether the bonus of 1880 and the new shares belonged to the widow as tenant for life, or to T. B. as entitled to the capital of the testator's estate at her death:—

**II. EXECUTOR—ADMINISTRATION—*contd.***

*Held*, by Kay, J., that they were capital and belonged to T. B.

*Held*, on appeal, that there is no rule that where a sum, whether called bonus or dividend, is distributed by a company among its shareholders, it must, if it is paid out of the accumulated profits of past years, be treated between tenant for life and remainderman as capital. In most, if not all, cases, the inquiry when the profits out of which it is paid were earned is immaterial, the question being whether the company, having the power of distributing its profits as dividend, or of converting them into capital, has taken the former or the latter course.

*Held*, that in the present case the company had not, by setting aside profits to a reserved fund applicable for purposes several of which were not such as ought to be satisfied out of capital, or to an undivided profits fund, made them capital,—that the distribution of the bonus was not conditional on the shareholders accepting the new shares, and that it was not converted into capital by the offer of the new shares, the shareholders not being bound to apply it in taking them; that it must therefore be treated as income belonging to the tenant for life, and that the new shares acquired by means of it belonged to her estate. *Re BOUCH. SPROULE v. BOUCH* — 29 Ch. D. 635, [54 L. J. Ch. 685, 52 L. T. 366, 33 W. R. 621 (C.A.).

3. — *Domicil—Priorities.*] In the administration of the English estate of a deceased domiciled abroad, foreign creditors are entitled to dividends *pari passu* with English creditors. So *held*, by Pearson, J. *Re KLEBE. KANNREUTHER v. GEISELBRECHT* — 28 Ch. D. 175, 54 L. J. Ch. 297, [52 L. T. 19, 33 W. R. 391.

4. — *Exoneration—Trust for Payment of Debts—Exoneration of General Personal Estate.*] The rule that a charge of debts on real estate does not of itself exonerate the personal estate applies to a case where a charge for payment of debts after the grantor's death is created by deed. But no such rule applies to specific personal estate given on similar trusts; in such a case the specific personal estate will be the primary fund for the payment of the debts.

A testator by a deed executed in his lifetime conveyed and assigned real and personal estate to trustees, in trust for himself during his life, and after his death to sell and convert the property, and to stand possessed of the proceeds on trust, after payment of costs, to pay all the debts which should be due from him, and his funeral expenses, and, after such payment as aforesaid, upon trusts for his sons and their children. By his will the testator, after reciting the deed, devised and bequeathed all and every the residue of his real and personal estate not comprised in and subject to the trusts of the deed, to his wife for her life, with remainders over, and he appointed his wife and one of the trustees of the deed executors of his will, which was proved by the widow and one of the trustees:—

*Held*, by Pearson, J., that, as regarded the real estate comprised in the deed, the testator's general personal estate was not exonerated from its primary liability to pay his debts.

But *held*, that the personal estate comprised in

**II. EXECUTOR—ADMINISTRATION—contd.**

the deed was the primary fund for the payment of the debts.

*French v. Chichester* (2 Vern. 568, 3 Bro. P. C. 2nd ed. p. 16) discussed and explained. *Trott v. BUCHANAN* - 28 Ch. D. 448, 54 L. J. Ch. 678, [52 L. T. 249, 33 W. R. 339]

5. — *Interest on Advances by Executor—Costs.* An executrix, who advanced money for the payment of simple contract debts charged on the testator's realty, allowed interest on such advances. Costs of an administration suit directed to be paid out of the rents and profits of the real estate. *BIGGAR v. EASTWOOD* 15 L. R. Ir. 219

6. — *Marshalling—Debts and Legacies—Charge—Exoneration—Mortmain Act—Lapsed Bequest.* Where a testator, having bequeathed his personal estate, exonerates it from debts and legacies, which he charges on real estate, and part of the bequest lapses or fails under the Mortmain Act, the exemption does not extend to the lapsed portion.

A testatrix devised her real estate to trustees in trust for sale, and directed them, out of the proceeds, to pay her funeral and testamentary expenses, debts, legacies, and duties; and she directed her trustees to sell her leaseholds, and to apply the proceeds in payment of so much of her debts, &c., as the proceeds of her real estate should be insufficient to pay; and she bequeathed all her personal estate to a charity. Part of the personal estate consisted of a mortgage debt, as to which the bequest failed and lapsed to the Crown, there being no next of kin:—*Held*, by Bacon, V.C., that the debts, expenses, legacies, and duties were chargeable, first, on the impure personality; secondly, on the real estate; and thirdly, on the leaseholds. *Re MEEBE. KILFORD v. BLANEY (or BLAYNEY)* 29 Ch. D. 145, 53 L. T. 17, 33 W. R. 630 [Varied by C. A., 31 Ch. D. 56, 34 W. R. 109]

7. — *Retainer—Devastavit—Statute of Frauds.* An executor or administrator would commit a *devastavit* who paid a debt to a creditor who is prevented from enforcing it by the Statute of Frauds. And for the same reason an executor or administrator cannot retain such debt if due to himself.

A father in consideration of the marriage of his daughter made a verbal promise to pay his daughter and her husband £500. He died intestate without performing his promise, and the daughter took out administration to his estate:—

*Held* (affirming the decision of Kay, J.), that the administratrix could not retain the debt out of the assets. *Re BOWNSON. FIELD v. WHITE* [29 Ch. D. 358, 54 L. J. Ch. 950, 53 L. T. 825, [33 W. R. 904, 49 J. P. 759 (C.A.)]

8. — *Retainer—Company—Liquidator—Contributory—Balance Order—Priority—Companies Act, 1862, ss. 75, 76, 103, 105, 106—Gen. Ord. Nov. 1862, r. 35; Sched. III., Form 39.* Where under sects. 76 and 103 of the Companies Act, 1862, and Rule 35 of Gen. Ord. Nov. 1862, a balance order has been obtained by the official liquidator of a company against the legal personal representative of a deceased contributory for payment of a call made after the death, the order

**II. EXECUTOR—ADMINISTRATION—contd.**

being in accordance with Form 39 in Sched. III. to the Gen. Ord., and directing the legal personal representative to pay the call "out of the assets of the deceased in his hands as such legal personal representative to be administered in due course of administration," such an order is not in the nature of a judgment so as to constitute the liquidator a judgment creditor: it is to be treated simply as analogous to a common administration judgment, or as a step to the administration judgment which may be obtained by the liquidator under sect. 105 of the Companies Act, 1862, and which is his proper remedy in case the legal personal representative has failed to comply with the order; and therefore, the order, whether followed by an administration judgment or not, leaves untouched all priorities and rights usually existing in the due course of the administration of the estate of a deceased person, including an executor's right of retainer. Thus, the order, if obtained against executors, does not give the liquidator priority over a debt due to one of them from the testator, and therefore retained by that executor out of the assets, even though the order be prior in date to notice of the retainer.

One of several executors is entitled to a right of retainer in respect of a mortgage debt due from the testator to a body of trustees of whom that executor is one.

Decision of Bacon, V.C. (51 L. T. 189, 1884 Dig. col. 175) reversed. *Re HUBBARD. INTERNATIONAL MARINE HYDROPATHIC COMPANY v. HAWES* [29 Ch. D. 934, 54 L. J. Ch. 923, 52 L. T. 908, [33 W. R. 666 (C.A.)]

9. — *Retainer—Assets received or paid into Court after Death of Executor—Right of Representatives of Executor—Debt under Covenant—Arbitrary Damages.* An executor's right of retainer is limited to so much of the assets of his testator as comes into the possession or under the control of the executor, or is paid into Court during his lifetime.

If an executor asserts in his lifetime a right of retainer, but dies without having exercised it, his representatives may exercise that right for the benefit of his estate only as to anything which came into the actual possession or under the actual control of their testator, or which was paid into Court during his lifetime.

*Wilson v. Coxwell* (23 Ch. D. 764, 52 L. J. Ch. 975), unless restricted in this way, must be treated as overruled.

Claims by an executor for breach of a covenant to assign a policy, and to replace furniture, if sold, by other furniture of like value, are claims for damages for breach of pecuniary contracts for which there is a certain standard or measure, and may therefore, on the authority of *Loane v. Casey* (2 W. Bl. 965), be retained. *Re COMPTON. NORTON v. COMPTON (No. 2)* - 30 Ch. D. 15, [54 L. J. Ch. 904, 53 L. T. 410 (C.A.)]

10. — *Retainer—Insolvent Estate—Tenant for Life and Remainderman.* By a settlement executed on D.'s marriage certain funds were settled upon trust for the wife for life, with remainder to the children of the marriage. D., who was solicitor for this trust, appropriated some of

**II. EXECUTOR—ADMINISTRATION—contd.**

these trust funds, and also appropriated a residuary estate to which his children were entitled under a will of which he was a trustee. D. died, leaving his widow his sole executrix, and a creditor brought an action for administration of his estate, which was insolvent. His executrix, on behalf of her own life interest, and also on behalf of her children, claimed the right to retain out of D.'s estate the amounts appropriated by him as above stated.

*Held*, reversing the decision of Pearson, J., that the trustees of the settlement and will being the persons to sue for and recover the funds appropriated, and not the executrix, she had no right of retainer. *Re DUNNING. HATHERLEY v. DUNNING* [54 L. J. Ch. 900, 53 L. T. 413, 33 W. R. 760 (C.A.)]

— Apportionment—Tenant for life and remainderman.  
*See* APPORTIONMENT.

— Interest on voluntary payments by executor.  
*See* INTEREST. 2.

— Married woman entitled to small share—Examination and affidavit dispensed with.  
*See* HUSBAND AND WIFE—WIFE'S PROPERTY. 27.

— Set-off—Lapse of devise — Debt due from heir-at-law.  
*See* SET-OFF.

**III. EXECUTOR—DE SON TORT**—*Administration Action—Motion to stay Proceedings before Administration Decree—Judicature (Ireland) Act, s. 27, sub-s. 5; s. 28, sub-s. 1.* An action having been brought in the Common Pleas Division against the Defendant as executor *de son tort* of B. deceased, the Defendant obtained letters of administration to B. and then issued a writ in the Chancery Division for administration of the real and personal estate of the deceased, and before obtaining a decree the Defendant moved the Common Pleas Division for an order to restrain the Plaintiff's action, and obtained an order staying the proceedings pending the administration suit:—

*Held*, by the Court of Appeal (reversing the order of the Common Pleas Division) that the Court had no jurisdiction to restrain the Plaintiff's action, as no decree for administration had been obtained;

*Per* Sir E. Sullivan, C.:—Sect. 27, sub-sect. 5, of the Judicature (Ireland) Act, 1877, only gives the Court power to stay proceedings in cases where the Court of Chancery, before the Act, could have restrained the action.

*Quære*, has the Court, even after decree, any power to restrain an action against an executor *de son tort*? *HIGGINS v. BROWNE*

[16 L. R. Ir. 173 (C.A.)]

2. — *Lease—Action for Rent.* An executor *de son tort* in possession of lands, held by the deceased owner for an unexpired term of years, is suable by the landlord for rent. *FIELDING v. CRONIN* - - - 16 L. R. Ir. 379 (C.A.)

**IV. EXECUTOR — LIABILITIES—Devastavit—Laches.** Mere laches in abstaining from calling upon the executors to realise for the purpose of paying his debt will not deprive a creditor of his right to sue the executors for *devastavit*, unless there has been such a course of conduct, or express authority, on his part that the executors have been thereby misled into parting with the assets, available to answer his claim. So *held*, by Chitty, J. *Re BIRCH. ROE v. BIRCH* 27 Ch. D. [622, 54 L. J. Ch. 119, 51 L. T. 777, 33 W. R. 73]

— Waste—Will—Condition—Claim by trustees.  
*See* WASTE.

**V. EXECUTOR — POWERS—Custody of Letters written to Testator—Summons to deliver Letters up before Expiration of Twelve Months from Testator's Death.** *Re PETRE. PETRE v. PETRE* [W. N. (1885) 93]

— Option to purchase—Interest not transmissible to executors of donee of option.  
*See* WILL—CONSTRUCTION. 31.

— Sale by acting executor.  
*See* VENDOR AND PURCHASER—TITLE.

**EXECUTOR—According to the tenor.**  
*See* PROBATE. 3.

— Bequest to.  
*See* WILL—EXECUTORS.

— Bequest to "executors or administrators"—Provision against lapse.  
*See* WILL—CONSTRUCTION. 21.

— Contract to renounce executorship—Illegality.  
*See* CONTRACT. 10.

— Discretion—Conduct of legatee—Conditional legacy.  
*See* WILL—CONDITION. 1.

— New trustee—Executor of sole trustee.  
*See* TRUSTEE—APPOINTMENT. 4.

— Purchase of testator's estate by executor who has not proved.  
*See* VENDOR AND PURCHASER—SALE TO TRUSTEE. 1.

— Solicitor—Professional charges.  
*See* TRUSTEE—COSTS AND CHARGES. 4.

**EXONERATION—Trust for payment of debts.**  
*See* EXECUTOR—ADMINISTRATION. 4.

**EXTRADITION—Fraud as an Agent—33 & 34 Vict. c. 52, s. 10—Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 3, 75—Offence misdescribed by Magistrate.** *Held*, by Mathew and Smith, JJ., that sect. 75 of the Larceny Act, 1861, is limited to the class of persons therein pointed at, and does not include every person intrusted with money.

A prisoner was committed to be extradited to France upon a warrant of committal which was found to be bad by the Court of Queen's Bench, but other offences alleged against him were included in the French warrant for his extradition.

*Held*, by Day and Smith, JJ., that he was entitled to be discharged. *Re DE PORTUGAL* [34 W. R. 24]

## F.

**FACTOR**—*Advances by Brokers to Agents for Sale—Antecedent Debt—Privity of Contract—Money had and received—Factors Act, 5 & 6 Vict. c. 39, ss. 3, 7.* The Appellants, merchants at Singapore, employed M. in London as agent to sell, without authority to pledge, cargoes which they from time to time consigned to him. M. employed the Respondents, London brokers, to sell the Appellants' consignments, and also in speculative purchases on his own account. The Respondents purchased shellac for M. without disclosing that they were buying as agents, and therefore were personally liable to the vendors on the contracts. Subsequently they made advances to M. to enable him to pay deposits on the shellac, and took as security bills of lading of some of the Appellants' cargoes. They had no notice that M. was acting improperly in pledging the cargoes. On obtaining the advances M. gave the Respondents cheques for the amount of the deposits, which were then paid by the Respondents:—

*Held*, affirming in this respect the decision of the Court of Appeal (24 Ch. D. 54, 52 L. J. Ch. 881, 48 L. T. 844, 31 W. R. 751, 1883 Dig. col. 158), that the obligation under which M. lay to the Respondents to pay the deposits and thus prevent their being called upon to pay them, did not constitute an antecedent debt within the meaning of the Factors Act, 5 & 6 Vict. c. 39, s. 3, and that the pledges were made in respect of *bond fide* advances, and not of antecedent debts, and were valid against the Appellants.

M. also pledged with the Respondents pepper consigned to him for sale by the Appellants, to secure an advance protected by the Factors Acts. The goods had been sold for M. by the Respondents, but not delivered to the purchasers, nor paid for, when M. died insolvent and heavily indebted to the Respondents on a general account. After the sale but before receiving the proceeds the Respondents had notice that the Appellants claimed the pepper and the proceeds:—

*Held*, reversing in this respect the decision of the Court of Appeal, that after repayment of the Respondents' advance the surplus proceeds of sale belonged to the Appellants; that the Appellants could sue the Respondents for such surplus, whether on the ground of privity of contract, or on the ground of property, or under the Factors Act, 5 & 6 Vict. c. 39, s. 7.

*New Zealand and Australian Land Company v. Watson* (7 Q. B. D. 374) distinguished and explained. *KALTENBACH v. LEWIS* 10 App. Cas. 617, [55 L. J. Ch. 58 (H. L., E.)]

**FACTORY**—Girl under fourteen employed in—Injury to—Negligence.  
See MASTER AND SERVANT. 16.

**FALSE IMPRISONMENT**—*Arrest on suspicion of Felony—Acquittal of Plaintiff—Pleading—Misdirection.* In an action for false imprisonment, the Defendant pleaded that money was stolen from him by some person unknown, and that he gave the Plaintiff into custody, suspecting him on reasonable and probable grounds of being the thief, but did not plead that the Plaintiff had

**FALSE IMPRISONMENT**—*continued.*

committed the theft. The Plaintiff had been tried on the charge of stealing the money, and was acquitted. At the trial of the civil action, evidence was given on both sides as to the question whether the offence had been committed by the Plaintiff. The learned Judge who tried the case, being of opinion that there was no evidence of theft by any person other than the Plaintiff, and that the Plaintiff's acquittal precluded the question of his guilt being tried in the civil action, directed a verdict for the Plaintiff, notwithstanding the objection of the Defendant's counsel, who required the question, "whether the Defendant's money had been feloniously stolen by any person," to be left to the jury:—

*Held*, a misdirection, and that it was open to the Defendant upon the pleadings to shew that the Plaintiff had stolen the money, and that he was not precluded from doing so by the acquittal of the Plaintiff on the criminal charge. *CAHILL v. FITZGIBBON* - - - 16 L. R. Ir. 371

— See also MALICIOUS PROSECUTION.

— Arrest by servant of Tramway Co.—Authority.

See MASTER AND SERVANT. 21.

**FALSE PRETENCES.**

See CRIMINAL LAW. 7—9.

**FALSE REPRESENTATION**—*Vendor and Purchaser—Sale under the Direction of the Court—Misrepresentation by Purchaser—Suppression of Facts by Purchaser.* The life interest of H. in a fund of about £300,000 was put up for sale in a suit for the administration of the estate of a testator who had purchased it. An attempted sale by auction having proved abortive, C., a solicitor, and B., an actuary, stated to L. & Co., the solicitors who conducted the sale, that they could produce evidence as to the life of H. which would induce the Court to accept a less sum than the supposed value, and that they were prepared to make an offer on behalf of themselves and four others, including H. The negotiation proceeded, and pending the settlement of a draft contract, B. prepared, and sent to L. & Co., to be laid before the Judge, a "skeleton case," which stated that H. had been examined by three specified medical men on behalf of the three insurance offices of which they were the respective medical examiners, and set out their joint opinion that the insurance of the life of H. was very hazardous, and should not be accepted at a less addition than fifteen years to his age, and that the whole premiums should be paid within ten years. It further stated that one of the three medical men had informed B. that he should advise his office to decline the proposal—which was thereupon withdrawn; that another of the offices refused to insure; and that the third consented to insure for £5000 at a £12 per cent. premium. It set out separate opinions of later date by two of the three medical men which were at least as unfavourable as the joint opinion, and concluded with the statement that H. had not since been examined on behalf of any life office. The Judge upon these materials took the opinions of actuaries, and when their reports were brought before him B. urged upon him that the income was liable to be reduced

**FALSE REPRESENTATION—continued.**

to £9000 by investment in Consols, and he sanctioned an agreement for purchase at £40,000, which was about the value of the life interest if the income was taken at £9000 and the life as only insurable at a £12 per cent. premium. The sale was completed, and nine years afterwards an action was brought on behalf of the creditors of the testator to impeach it. It appeared that, at the time when the skeleton case was made out, C. & B. had in their hands a later opinion by one of the above-mentioned medical officers to the effect that a £10 per cent. premium would be the fair one, and before the contract was approved by the Judge several Scotch offices had agreed to grant, at premiums of £10 11s. payable for ten years, insurances for sums sufficient in the whole to cover the purchase-money, and an English office had expressed its willingness to grant an insurance for £4000 on still more favourable terms. None of these facts were mentioned in the skeleton case or disclosed to the Judge:—

*Held*, reversing the judgment of Fry, J. (23 Ch. D. 302, 52 L. J. Ch. 465, 48 L. T. 929, 31 W. R. 540, 1883 Dig. col. 404), that the sale must be set aside, for that C. and B. knew that the materials which they laid before the Judge to enable him to form his opinion whether the sale should be sanctioned were incomplete, and calculated to produce the false impression that the life could only be insured at £12 per cent., and that the sanction of the Judge must therefore be regarded as obtained by fraud.

A person desirous of buying property which is being sold under the direction of the Court must either abstain from laying any information before the Court in order to obtain its approval, or he must lay before it all the information he possesses which is material to enable the Court to form a correct opinion, and he will not be held excused from so doing because the Court does not ask for further information:—

*Held*, that if the Scotch insurances were known to L. & Co., the solicitors conducting the sale (a fact which the Court considered not proved), the Defendants could not successfully contend that they were not responsible for the failure of L. & Co. to mention them to the Judge, for that it was the duty of B., who took an active personal part in obtaining the sanction of the Judge, and who had reason to believe that the Judge did not know of them, to see that he was informed of them. *BOSWELL v. COAKS* 27 Ch. D. 424, 54 L. J. Ch. 347, [51 L. T. 242, 33 W. R. 376 (C.A.)]

— Action for infringing trade-mark—Misrepresentations by Plaintiff.  
*See* TRADE-MARK. 1.

— Guarantee, joint—Death of guarantor—Estoppel.  
*See* PRINCIPAL AND SURETY. 3.

— Insurance—Concealment of material fact.  
*See* INSURANCE, MARINE. 4.

— Prospectus—Issue of Debentures—Object of Loan.  
*See* COMPANY—PROSPECTUS.

— Sale of hotel.  
*See* VENDOR AND PURCHASER—FRAUD.

**FALSE REPRESENTATION—continued.**

— Secretary of company—Company's liability.  
*See* PRINCIPAL AND AGENT. 7.

— Setting aside settlement.  
*See* SETTLEMENT—VALIDITY.

**FEES**—Counsel's—Refreshers.  
*See* PRACTICE—COSTS. 3, 4, 24.

— Court fees.  
*See* PRACTICE—COSTS. 6.  
*PRACTICE—CHAMBERS. 5.*

— Sheriffs—Sale under *fi. fa.* partially abortive.  
*See* SHERIFF. 2.

**FEME COVERT.**

*See* HUSBAND AND WIFE.

**FROFFMENT**—Tortious operation of—Manor.

*See* MANOR.

**FIDUCIARY RELATION.**

*See* TRUSTEE.

VENDOR AND PURCHASER—SALE TO TRUSTEE.

**FIERI FACIAS.**

*See* SHERIFF.

**FIRE INSURANCE.**

*See* INSURANCE, FIRE.

**FISHERY**—Private Fishery—Unlawfully taking "Fish"—"Cray-fish"—24 & 25 Vict. c. 96, s. 24.

*Held*, by Mathew and Smith, JJ., that a person who had taken, or attempted to take, "cray-fish" in a private fishery, was guilty of an offence under the above section. *CAYGILL v. THWAITES*

[33 W. R. 581, 49 J. P. 614]

2. — Unlawful Fishing—Evidence of Right of Fishing—Lease—Proof of Execution of Lease.] S. was charged with unlawfully fishing in a river contrary to 24 & 25 Vict. c. 96, s. 24. The prosecutor produced a lease of the lands executed by the preceding owner, and proved execution by the lessee, but the witness of the lessor's signature was not called. The lease contained an express reservation of fishing, and the term was still current. Both the original lessor and lessee were dead, but rent had been received and paid under the lease for 7 years:—*Held*, by Grove, Hawkins, and Smith, JJ., that there was sufficient evidence of a private right of fishing without probate of the original lessor's will, and that the justices ought to convict. *GREENBANK v. SANDERSON* 49 J. P. 40

**FIXTURES**—Mortgage—Driving-belts—Bills of Sale Act, 1854 (17 & 18 Vict. c. 36).] A wheel-factory, including the machinery and gear, was mortgaged to the Plaintiffs. The deed of mortgage was not registered as a bill of sale. Leathern driving-belts were used in working the machinery at the factory; they were fastened to certain wheels or drums, but could be removed at pleasure when the machinery was thrown out of gear. They were necessary parts of the machinery. The mortgagor having liquidated his affairs under the Bankruptcy Act, 1869, the Defendant, his trustee, sold the belts:—*Held*, that the belts passed to the Plaintiffs under the mortgage, and that they were entitled to maintain an action of conversion against the Defendant.—*Longbottom v. Berry* (Law Rep. 5 Q. B. 123) approved. *SHEFFIELD AND SOUTH YORKSHIRE PERMANENT BENEFIT BUILDING SOCIETY v. HARRISON* 15 Q. B. D. 358, 54 L. J. Q. B. [15, 51 L. T. 649, 33 W. R. 144 (C.A.)]



**FIXTURES—continued.**

2. — *Mortgage—Smelting Works—Ore absorbed by Walls of Furnace.*] A company, which carried on the business of smelting ores, mortgaged their leasehold property and the buildings and works thereon (exclusive of trade machinery as defined by the Bills of Sale Act, 1878). The company executed a second mortgage of the same property, together with their engines, plant, machinery, tools, stocks of metal and ore, loose materials, stock in trade, chattels and effects. The first mortgagees entered into possession and sold the property comprised in their mortgage under a power of sale conferred on them by it. In the process of smelting a certain quantity of gold and silver ore is absorbed by the bricks which line the furnace, and this can only be recovered by breaking up the furnaces and smelting the bricks. The second mortgagees claimed to be entitled to the absorbed ores and to break up the furnaces for the purpose of obtaining them, making compensation for the injury done to the furnaces. It appeared that in the ordinary course of a smelting business this process would be adopted from time to time. The first mortgagees and the purchaser contended that the absorbed ores had passed under the first mortgage with the furnaces. The company was in liquidation, and the liquidator contended that the absorbed ores did not pass under either mortgage.

*Held*, by Pearson, J., that the doctrine of trade fixtures has no application between mortgagor and mortgagee, and that the first mortgagees were entitled to the buildings in the condition in which they were at the time when they took possession. *Walmsley v. Milne* (7 C. B. (N.S.) 135) followed. *TOTTENHAM v. SWANSEA ZINC ORE CO.*

[52 L. T. 738, W. N. (1885) 69]

3. — *Mortgage of Chattels—"Trade Fixtures, Fittings, and other Things used for carrying on the Business" of a Restaurant—Cooking Utensils, &c., held not to pass.* *Re MACDONALD.* DOWLING v. STEWART - - - W. N. (1885) 98

— Mortgage—Lease by mortgagor in possession.

See MORTGAGE—MORTGAGOR IN POSSESSION. 2.

**FOG**—Duty of ship in.

See SHIP—COLLISION. 13, 14.

**FOOD**—Adulteration.

See ADULTERATION.

**FORECLOSURE.**

See MORTGAGE—FORECLOSURE.

**FOREIGN COMPANY**—Service of writ of summons on.

See PRACTICE—WRIT. 2.

— Winding-up—Jurisdiction.

See COMPANY—WINDING-UP. 10.

**FOREIGN COUNTRY**—Infant born in—Appointment of guardian—Jurisdiction.

See INFANT. 2.

**FOREIGN COURT**—Winding-up order by—English company with foreign business.

See COMPANY—WINDING-UP. 8.

**FOREIGN JUDGMENT**—Action on—*Estoppel*—Defendant not resident in, or subject of, the foreign Country—Appearance to protect Property from

**FOREIGN JUDGMENT—continued.**

*seizure in case of judgment by Default.*] Where an action is brought upon a foreign judgment, it is no defence that at the time of the proceedings in the foreign Court the Defendant was not resident or domiciled or under allegiance in the foreign country, and appeared in the foreign Court as Defendant merely to protect his property from seizure in case judgment by default should be given against him. There is no difference between a case where the Defendant's object in appearing is to protect property actually seized and a case where his object is to protect property which may become liable to seizure.

*De Cosse Brissac v. Rathbone* (6 H. & N. 301, 30 L. J. Ex. 238) followed. *Dictum* of Parke, B., in *General Steam Navigation Co. v. Guillon* (11 M. & W. 877, p. 894; 13 L. J. Ex. 168, at p. 176) dissented from. *Schibsey v. Westenholz* (L. R. 6 Q. B. 155, 40 L. J. Q. B. 73) questioned. *VOINET v. BARRETT* - - - 54 L. J. Q. B. 521 [Affirmed (on this point), 55 L. J. Q. B. 39, 34 W. R. 161.]

**FORFEITURE**—Clause for, in settlement.

See SETTLEMENT—FORFEITURE CLAUSE.

— Conditional gift by will.

See WILL—CONDITION.

— Lease—Re-entry.

See LANDLORD AND TENANT—RE-ENTRY.

**FORM**—Bill of sale.

See BILL OF SALE—FORMALITIES. 2—5.

**FRANCHISE**—Parliamentary.

See PARLIAMENT.

**FRAUD.**

See FALSE REPRESENTATION.

— Agent—Extradition—Larceny Act.

See EXTRADITION.

— Allegations of, in pleadings—Opening settled account—Production of documents.

See PRACTICE—DISCOVERY—DOCUMENTS. 5.

— Complicity in—Notice.

See POWER OF ATTORNEY.

— Composition—Preference of some creditors.

See BANKRUPTCY—COMPOSITION. 6.

— Fraudulent agreement—Rescission.

See COMPANY—WINDING-UP. 9.

— Judgment obtained by collusion—Setting aside.

See EXECUTOR—ACTIONS. 2.

— Mortgagee—Negligence amounting to fraud.

See MORTGAGE—PRIORITY. 8.

— On power—Appointment upon a bargain to settle appointed property.

See POWER. 4.

— Rape—Consent obtained by fraud.

See CRIMINAL LAW. 21.

— Sale of hotel.

See VENDOR AND PURCHASER—FRAUD.

— Sale under direction of Court—Suppression of facts by purchaser.

See FALSE REPRESENTATION.

**FRAUDS, STATUTE OF**—Indemnity—An oral agreement to indemnify one for becoming surety

**FRAUDS, STATUTE OF—continued.**

for another is invalid within the Statute of Frauds—English cases considered. *MAY v. WILLIAMS*

[48 Amer. R. 80 (U.S.)]

2. — *Memorandum*—29 Car. 2, c. 3, s. 4—*Two Documents referring to same parol Contract of Sale—Specific Performance.* Two or more documents which do not refer to each other, but do refer to the same parol contract, and which, when taken together, contain all the terms of the parol contract, may together constitute a sufficient memorandum within the Statute of Frauds.

On the 22nd of September, 1882, the Defendant verbally agreed with the Plaintiff to sell him her share in certain property, for £200, and signed and gave to him the following receipt: "Sept. 22nd, 1882. Received of J. Studds one pound of my share in the Barrett's Grove property the sum of two hundred pounds." No time was fixed for completion, and no abstract was delivered, and on the 19th of March, 1883, the Defendant wrote to Plaintiff; "Mr. Studds,—Sir,—If the balance of £199 on account of the purchase of my share of the property be not paid on or before the 22nd instant I shall consider the agreement (made 22nd of Sept., 1882) not any longer binding":—

*Held*, by North, J., that the word "balance" in the letter sufficiently referred to the receipt to enable the two documents to be read together, and that they constituted a sufficient memorandum within the Statute of Frauds, sect. 4:

*Held*, also, that even if the word "balance" was not sufficient to connect the two documents, yet that as they both referred to the same parol contract, all the terms of which were contained in one or other of them, they could be read together, and together constituted a good memorandum within the statute. *STUDDS v. WATSON* - 23 Ch. D. 305, [54 L. J. Ch. 628, 52 L. T. 129, 33 W. R. 118]

3. — *Memorandum*—Draft for purchase-money of lands, drawn by agent without disclosing principal's name. *NEAVES v. NORTH STATE MINING CO.* - 47 Amer. R. 529 (U.S.)

4. — Promise to pay debt of another—Sufficiency of consideration. *MULLER v. RIVIERE* [46 Amer. R. 291 (U.S.)]

— Agreement for lease—Specific performance. *See LANDLORD AND TENANT.* 1, 3.

— Agreement not to be performed within a year—Guarantee of dividends. *See COMPANY—MEMORANDUM.* 2.

— Executor—Retainer—Devastavit. *See EXECUTOR—ADMINISTRATION.* 7.

— Memorandum in writing. *See CONTRACT.* 1.

— Parol agreement to settle—Part performance. *See HUSBAND AND WIFE—WIFE'S PROPERTY.* 2.

— Sale of goods—Acceptance. *See SALE OF GOODS.* 1.

— Sale of land—Contracting parties—Agent—Correspondence. *See VENDOR AND PURCHASER—CONTRACT.* 1.

— Trust arising "by operation of law." *See VOLUNTARY CONVEYANCE.* 1.

**FRAUDULENT CONVEYANCE**—13 Eliz. c. 5—*Laches.* A specialty creditor brought an action to set aside a conveyance as fraudulent under 13 Eliz. c. 5, nearly ten years after the death of the grantor. The Plaintiff had been aware of the facts during the whole of that period, and gave no satisfactory reason for his delay:—

*Held*, affirming the decision of North, J. (52 L. J. Ch. 733, 31 W. R. 720, 1883 Dig. col. 165), that as the Plaintiff was coming to enforce a legal right his mere delay to take proceedings was no defence, as it had not continued long enough to bar his legal right, the case standing on a different footing from a suit to set aside on equitable grounds a deed which was valid at law. *Re MADDEVER. THREE TOWNS BANKING COMPANY v. MADDEVER* 27 Ch. D. 523, 53 L. J. Ch. 998, 52 L.

[T. 35, 33 W. R. 286 (C.A.)]

2. — 13 Eliz. c. 5—*Policy—Assignment.* A trader insured his stock-in-trade and other effects. These were destroyed by fire. He assigned the policies to trustees to pay and divide the moneys received thereunder among all his creditors rateably, and to pay the balance, if any, to himself:—*Held*, that the assignment was not void under 13 Eliz. c. 5, at the suit of a creditor whose debt was under £50. *GREEN v. BRAND*

[1 C. & E. 410.]

— 27 Eliz. c. 4—Void against purchasers. *See VOLUNTARY CONVEYANCE.*

**FRAUDULENT PREFERENCE**—*Cessio bonorum.*—*See BANKRUPTCY—ACT OF BANKRUPTCY.* 3.

**FREIGHT.**

*See SHIP—FREIGHT.*

— Non-payment of, by consignee—Consignor's liability. *See CARRIER.* 3.

**FURNITURE**—Hiring—Hotel-keeper—Trade custom. *See BANKRUPTCY—ORDER AND DISPOSITION.* 3.

**G.**

**GAME**—Ground game—Right to kill.

*See GROUND GAME ACT.*

— Right of shooting—Reservation of.

*See LANDLORD AND TENANT—LEASE.* 11, 12.

**GAME ACTS**—*Prevention of Poaching—Search by Constable in Highway—Seizure*—25 & 26 Vict. c. 114, s. 2.] A police constable saw the Appellant in a highway with some rabbits slung over his back. The Appellant left the highway and ran across a meadow followed by the police constable, and on being overtaken, at a distance from the highway, he threw the rabbits on the ground, and they were then and there taken possession of by the police constable. On appeal against a conviction under 25 & 26 Vict. c. 114, s. 2:—*Held*, by Mathew and Smith, JJ., that the conviction was right.—*Turner v. Morgan* (Law Rep. 10 C. P. 587) commented on. *LLOYD v. LLOYD*

[14 Q. B. D. 725, 53 L. T. 536, 33 W. R. 457, 49 J. P. 630]

**GAMING**—*Betting—Place used for Betting, What is*—16 & 17 Vict. c. 119, ss. 1, 3.] Dog-races were held in an inclosed field hired for the purpose by a committee, the public being admitted to a reserved portion of the field on payment of a small sum. The Appellant attended the races, and moved about the reserved portion, making bets with various persons there:—*Held*, by Coleridge, C.J., and Smith, J., that the Appellant did not use a place for the purpose of betting with persons resorting thereto, within the meaning of ss. 1 and 3 of 16 & 17 Vict. c. 119, and therefore was not liable to be convicted for an offence under those sections. *SNOW v. HILL* 14 Q. B. D. 588, 54 L. J. [M. C. 95, 52 L. T. 859, 33 W. R. 475, 49 J. P. 440

2. — *Betting—Agent betting for Principal—Action for the Money received—Wagering*—8 & 9 Vict. c. 109, s. 18.] The Plaintiff employed the Defendant for a commission to make bets for him on horses. The Defendant accordingly made such bets, and he received the winnings from the persons with whom he had so betted. In an action by the Plaintiff for the amount which the Defendant had so received:—*Held*, that 8 & 9 Vict. c. 109, sect. 18, which makes null and void all contracts by way of wagering, did not apply to the contract between the Plaintiff and Defendant, and that, therefore, notwithstanding that statute, the Plaintiff was entitled to recover in respect of the debts which had been so paid to the Defendant.—*Beyer v. Adams* (26 L. J. (Ch.) 841) overruled. *BRIDGER v. SAVAGE* 15 Q. B. D. [363, 54 L. J. Q. B. 464, 53 L. T. 129, 33 W. R. 891, [49 J. P. 725 (C.A.)

#### **GARNISHEE ORDER.**

See PRACTICE—ATTACHMENT OF DEBTS.

**GAS COMPANY**—Distress for money due to, for gas supplied.

See BANKRUPTCY—DISTRESS.

— Pipes under surface of streets—Injury to, by steam-roller.

See HIGHWAY. 10.

**GASWORKS CLAUSES ACTS**—*Laying Pipe without consent of Undertakers—Gasworks Clauses Act, 1847* (10 & 11 Vict. c. 15), s. 18: and 1871 (34 & 35 Vict. c. 41), s. 15.] The Appellants, on their own premises, substituted for part of a gas-pipe belonging to the Respondents a larger pipe in order to increase their supply, without first having obtained the Respondents' consent, though notice, under sect. 15 of 34 & 35 Vict. c. 41, to disconnect the pipe from the meter, was duly given. There was no proof of any fraud, waste, or misuse of the gas.

*Held*, by Field and Manisty, JJ., that the Appellants had committed an offence under sect. 18 of 10 & 11 Vict. c. 15. *WOOD (or WOODS, or MORRISON WOOD) & Co. v. WEST HAM GAS CO.*

[52 L. T. 817, 33 W. R. 799, 49 J. P. 662, [W. N. (1885) 138

**GENERAL AVERAGE**—Expenses of reshipping cargo and of ship leaving port of refuge.

See INSURANCE, MARINE. 1.

— Liability of cargo owner.

See SHIP—GENERAL AVERAGE.

**GIFT**—*Chattels—Bankruptcy of Donor.*] In 1866, A., soon after the birth of his son T., purchased a pipe of wine for his son, and had it bottled and laid down in his cellar, and from that time it remained intact in the cellar and was known in the family and amongst their friends as T.'s wine. In 1885 A. became bankrupt:—*Held*, that there was not sufficient evidence of an intention to make an immediate present gift of the wine to T., and that it passed to the trustee in bankruptcy. *Ex parte RIDGWAY. Re RIDGWAY* - 15 Q. B. D. 447, [54 L. J. Q. B. 570, 34 W. R. 80

2. — *Declaration of Trust—Imperfect Gift—Direction to Donor's Executors—Retention of Life Interest.*] S., more than a year before his death, informed the Plaintiff that he intended to give her a debenture bond for £1000 in the M. Ry. Co., and soon after this he signed the following memorandum: "I wish to communicate to my executors that I have to-day given to F." (the Plaintiff) "my £1000 debenture bond of the M. Ry. Co.; but, as I shall require the annual dividends to meet my necessary expenses, I retain the document in my own possession for my lifetime, requesting you, on my decease, to hand it over to Miss F., and communicate to the secretary of the railway co. at the M. office, relative to the transfer of the said bond being entered in their books. Given under my hand this 9th day of Feb., 1882. As witness my hand, G. S. P.S.—You will find the bond in my deed-box attached to this memorandum." After the death of S. a certificate of debenture stock for £1000 in the M. Ry. Co. was found with the memorandum in the deed-box.

*Held*, reversing the decision of Pearson, J. (W. N. (1884) 127, 1884 Dig. col. 191), that the memorandum was an ineffectual attempt to assign the stock, and did not amount to a good declaration of trust, and that F. had no interest in the stock.

*Moore v. Moore* (L. R. 18 Eq. 474, 30 L. T. 752) approved. *Re SHIELD. PETHYBRIDGE v. BURROW* [53 L. T. 5, W. N. (1885) 83 (C.A.)

3. — *Delivery—Release of mortgage held not to take effect for want of delivery.* *BRUNN v. SCHNETT* - - - 48 Amer. R. 499 (U.S.)

4. — *Mortgage Deed—Equitable Charge—Invalid Transfer of Charge—Right to Deed.*] An equitable mortgagee by deposit of a deed cannot pass his interest in the property by a parol voluntary gift accompanied by delivery of the deed; and as his interest in the deed is only incidental to his interest in the mortgage the donee of the deed has no right to retain it. *Re RICHARDSON. SHILLITO v. HOBSON* - - - 30 Ch. D. 396 (C.A.)

5. — *What constitutes a gift.* *MCCORD v. MCCORD* - - - 46 Amer. R. 9 (U.S.)  
*SMITH v. FERGUSON* - 46 Amer. R. 216 (U.S.)  
*REED v. COPELAND* - 47 Amer. R. 663 (U.S.)

— Husband and wife.

See HUSBAND AND WIFE—WIFE'S PROPERTY. 2, 6.

— In expectation of death.

See DONATIO MORTIS CAUSÂ.

— Judgment summons—"Means to pay"—Money arising from gift.

See ARREST. 2.

**GOODS**—Carriage of.  
See **CARRIER**.

— Sale of.  
See **SALE OF GOODS**.

**GOODWILL**—Vendor setting up new Business—Right to solicit old Customers.] T. P., as trustee of a will, carried on a business which had been carried on by the testator under the name of James P. By an agreement made to compromise a suit, James P., a son of the testator and a beneficiary under his will, agreed to sell to T. P. all his interest in the business, and in the property on which it was carried on. And it was provided that nothing in the agreement should prevent James P. from carrying on the like business where he should think fit, and under the name of James P. T. P. brought this action to enforce this agreement, and to restrain James P. from soliciting the customers of the old firm. An injunction was accordingly granted by Kay, J., on the authority of *Labouchere v. Dawson* (L. R. 13 Eq. 322, 41 L. J. Ch. 427, 25 L. T. 894, 20 W. R. 309) and the cases in which it had been followed:—*Held*, by Baggallay and Cotton, L.J.J., dissentiente Lindley, L.J., that *Labouchere v. Dawson* was wrongly decided, and ought to be overruled, and that even apart from the proviso in the agreement, the Plaintiff was not entitled to the injunction which he had obtained:—*Held*, by the whole Court, that the proviso in the agreement authorized the Defendant to carry on business in the same way as any stranger might lawfully do, and took the case out of the authority of *Labouchere v. Dawson*, supposing that case to have been well decided. **PEARSON v. PEARSON** 27 Ch. D. 145, [54 L. J. Ch. 32, 51 L. T. 311, 32 W. R. 1006] (C.A.)

2. — Vendor not precluded from setting up rival establishment in same vicinity. **BERGAMINI v. BASTIAN** 48 Amer. R. 216 (U.S.)

**GROUND GAME ACT, 1880**—Power of Landlord to authorize Person to kill Rabbits—43 & 44 Vict. c. 47, s. 1 (1).] Where a person had been invited by letter by a farmer to stay with him for a week and shoot rabbits, the Lord Justice-Clerk and Lord Young were of opinion that such a person was one who might be authorized under the Act to kill rabbits. **STUART v. MURRAY** [12 C. of S. Cas. (Just.) 9 (Sc.)]

2. — Right to kill Game vested in Person other than Occupier—Reservation of Game to Landlord—43 & 44 Vict. c. 47, s. 5 (1).] By lease dated 4th Sept., 1865, H. demised to L. the shooting and game of the lands of P. for twenty years from 1st Nov., 1863. In 1874 L. assigned to B. and W., who, after the expiration of the lease, continued to hold the right of shooting as tenants from year to year. By lease dated 28th June, 1869, H. demised to C. the lands of P. for the term of sixty years, reserving to the landlord the game:—*Held*, that the case came within sect. 5 of the above Act, and that C. was not entitled, on the expiration of the lease of 1865, to take and kill ground game. **HASSARD v. CLARK** 13 L. R. [Ir. 391]

#### **GUARANTEE.**

See **PRINCIPAL AND SURETY**.

**GUARDIAN**—Of infant.

See **INFANT**. 2, 3.

**GUARDIANS OF THE POOR**—Disqualification—Salary derived from poor-rate.  
See **POOR LAW**. 1.

## **H.**

**HABEAS CORPUS**—Prisoner—Party to Motion.] The Court cannot grant a habeas corpus to a party to a suit, in custody, to enable him to appear in Court merely for the purpose of arguing his case in person.—*Benns v. Mosley* (2 C. B. (N.S.) 116) followed. **WELDON v. NEAL** [15 Q. B. D. 471, 54 L. J. Q. B. 399, 33 W. R. 581]

— Infant—Custody.

See **INFANT**. 1.

— Military law—Person subject to.  
See **ARMY**.

**HARBOUR COMMISSIONERS**—Negligence of harbour master.  
See **SHIP**—**HARBOUR COMMISSIONERS**.

**HEARING**—Court fee—Rule against justices.  
See **PRACTICE**—**COSTS**. 6.

**HEARSAY EVIDENCE**—Pedigree.  
See **EVIDENCE**. 6, 7.

**HEIR**—Gift by will to "heirs."

See **WILL**—**CONSTRUCTION**. 14—17.

**HEIRLOOMS**—Sale of, by tenant for life.

See **SETTLED LAND ACTS**. 3, 4, 18.

**HIGHWAY**—Board—Contract not under Seal—Retainer of Solicitor—Costs of opposing Bill in Parliament.] A highway board passed a resolution directing their clerk to take the necessary steps to oppose, on behalf of the board, a bill in Parliament which contained provisions contrary to the Railway Clauses Acts, and which would have prejudicially affected certain of the highways within their district. In pursuance of such resolution the clerk to the board instructed the Plaintiffs, a firm of solicitors, to oppose the bill. In an action by the Plaintiffs to recover their costs of such opposition from the board:—*Held*, by Lopes, J., that the purpose for which they had been retained was not incidental to the purpose for which the highway board was incorporated, and that as they had not been retained under the seal of the board, they had no right of action against the board. **PHELPS v. UPTON SNOODSBURY HIGHWAY BOARD** 49 J. P. 408; W. N. (1885) 82

2. — Dedication — "Turnpike Road" — Private Owners — Tolls — "Street" — "Highway repairable by Inhabitants at Large" — Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 150.] The promoters of an intended road by deed declared that the road should not only be enjoyed by them for their individual purposes, but "should be open to the use of the public at large for all manner of purposes in all respects as a common turnpike road," but subject to the payment of tolls by the persons using it:—

*Held*, that this was not a dedication of the road to the public, and that the road was not a highway repairable by the inhabitants at large under s. 150 of the Public Health Act, 1875.

**HIGHWAY—continued.**

*Semble*, an individual cannot, without legislative authority, dedicate a road to the public if he reserves the right to charge tolls for the user; and the mere fact that a number of persons form themselves into a company for making and maintaining a road, and erect gates and bars and charge tolls, does not make the road a "turnpike road" in the sense of a turnpike road made such by Act of Parliament, and so dedicated to the public. *AUSTERBERRY v. OLDHAM* (MAYOR OF)

[29 Ch. D. 750, 53 L. T. 543, 33 W. R. 807, 49 J. P. 532 (C.A.)]

3. — *Encroachment—Limitation of Time for Conviction*—3 Geo. 4, c. 126, s. 118—9 Geo. 4, c. 77, s. 18—*Turnpike Acts Continuance Act*, 1865 (28 & 29 Vict. c. 107), s. 2.] By 9 Geo. 4, c. 77, s. 18, no one may be convicted of an offence against 3 Geo. 4, c. 126, s. 118 (which subjects persons causing encroachments on turnpike roads to a penalty), after the expiration of six months from the time when such offence shall have been committed:—

*Held*, by Hawkins and Day, JJ., that this period runs from the time that a substantial encroachment of the highway has been caused, and not from the final completion of the encroaching building or other encroachment. *HYDE v. ENTWISTLE* - - - 52 L. T. 760, 49 J. P. 517

4. — *Main Road, Application for Provisional Order to declare ordinary Highway—Highways and Locomotives Amendment Act*, 1878 (41 & 42 Vict. c. 77), s. 16—*Road Disturnpiked between the 31st of December, 1870, and the passing of the Act.*] The 16th section of the Highways and Locomotives Amendment Act, 1878, provides as follows: "If it appears to a county authority that any road within their county which, within the period between the 31st of December, 1870, and the date of the passing of this Act, ceased to be a turnpike road, ought not to become a main road in pursuance of this Act, such authority shall, before the 1st of February, 1879, make an application to the Local Government Board for a provisional order declaring that such road ought not to become a main road." The section further provides that, "Subject as aforesaid, where it appears to a county authority that any road within their county, which has become a main road in pursuance of this Act, ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway":—*Held*, that a road which had ceased to be a turnpike road within the period specified by the first of the above-mentioned provisions, and had become a main road, there being no application for a provisional order before the 1st of February, 1879, was not excluded from the operation of the second of the above-mentioned provisions, and that the Local Government Board had, therefore, jurisdiction to make a provisional order declaring such road an ordinary highway upon an application made subsequently to the 1st of February, 1879. *REG. v. LOCAL GOVERNMENT BOARD* 15 Q. B. D. 70, 54 L. J. M. C. 104, [53 L. T. 194, 49 J. P. 580 (C.A.)]

5. — *Obstruction—Traction Engine on Nar-*

**HIGHWAY—continued.**

*row Road.*] Persons using a traction engine and trucks on a highway may be indicted for a nuisance if they create a substantial obstruction, and occasion delay and inconvenience to the public, substantially greater than such as would arise from the use of the carts and horses. The owners are responsible for the general management of the engine by their servants. *REG. v. CHITTENDEN*

[49 J. P. 503]

6. — *Rate—Urban Authority—Local Board—Highway Act*, 1835 (5 & 6 Will. 4, c. 50), ss. 5, 29—*Public Health Act*, 1875 (38 & 39 Vict. c. 55), ss. 144, 216, 217.] The Respondents were the local board for the district of G. Part of their district, called the outer district, was not rated for works of paving, water supply, and sewerage. The Respondents, under the Public Health Act, 1875, ss. 216, 217, made a highway rate of 3s. 4d. in the pound upon the inhabitants of the outer district, whose consent to the rate had not been obtained:—

*Held*, that, although the local board were surveyors of highways within the outer district, pursuant to the Public Health Act, 1875, s. 144, yet the limit imposed upon rates made by surveyors of highways under the Highway Act, 1835, s. 29 (10d. in the pound for one rate, and 2s. 6d. in the pound for one year), unless the consent of the parishioners had been obtained, did not apply to the highway rates made by a local board pursuant to the Public Health Act, 1875, ss. 216, 217, and that the rate of 3s. 4d. in the pound made by the Respondents was valid.

Decision of the Queen's Bench Division (48 L. T. 636, 47 J. P. 552, 1883 Dig. col. 172) affirmed. *DYSON v. GREETLAND LOCAL BOARD* 13 Q. B. [D. 946, 53 L. J. M. C. 106, 48 J. P. 596 (C.A.)]

7. — *Rate—Waywarden—Publication—Signature and Allowance of Justices*—27 & 28 Vict. c. 101, s. 33.] Where a highway rate made by a waywarden of a highway district under the above section has been published like a poor-rate, it is not necessary that it should also have been signed and allowed by justices like a poor-rate. *WORTHINGTON v. GILL* - - - 49 J. P. 629

8. — *Repair—Highway in Borough—Expenses of Maintenance—Contribution from County Authority—Highway Act*, 1862 (25 & 26 Vict. c. 61), s. 2—*Highways and Locomotive (Amendment) Act*, 1878 (41 & 42 Vict. 77), s. 13, 38.] By the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 2, defining the word "county," "for the purposes of this Act all liberties and franchises except boroughs . . . shall be considered as forming part of that county by which they are surrounded."—By the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 38, "in this Act 'county' has the same meaning as it has in the Highway Acts, 1862 and 1864," and by s. 13 any road which has between the 31st of December, 1870, and the date of the Act ceased to be a turnpike road . . . shall be deemed to be a main road, and one half of the expenses incurred in the maintenance shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area "by the county authority of the county in which such road is situate" out of the county rate.—A

**HIGHWAY—continued.**

road in the borough and highway area of Over Darwen, in Lancashire, ceased to be a turnpike road in 1877:—*Held*, that, although for the purposes of the Highway Act, 1862, boroughs are not to be considered as forming parts of counties, yet as the road was within the geographical limits of Lancashire, the county of Lancaster was the "county in which such road is situate" within 41 & 42 Vict. c. 77, s. 13, and the county authority was liable to pay half the expenses incurred in the maintenance of such road.—Judgment of the Queen's Bench Division (13 Q. B. D. 497, 53 L. J. M. C. 198, 51 L. T. 630, 48 J. P. 437, 1884 Dig. col. 196) affirmed. *OVER DARWEN (MAYOR OF) v. JUSTICES OF LANCASTER*

[15 Q. B. D. 20, 54 L. J. M. C. 51, 51 L. T. 739  
[(C.A.)]

9. — *Repair—Highways and Locomotives (Amendment) Act, 1878* (41 & 42 Vict. c. 77), s. 13 — *Disturnpiked Road—18 & 19 Vict. c. c.—Towns Improvement Clauses Act, 1847* (10 & 11 Vict. c. 34), ss. 47, 49, 50, 51—*Expiration of Turnpike Trusts in 1877—Cesser of Turnpike Road—Main Road—Contribution from County for Repair.* By a local Act (18 & 19 Vict. c. c.) passed in 1855, and incorporating the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), the maintenance of all highways within a district, including a turnpike road, became vested in commissioners. The trustees of the turnpike road thereupon ceased to repair it within the limits of the district. The turnpike trust expired in 1877. The commissioners were the "highway authority" for the district, which was a "highway area" within the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 13:—*Held*, that, notwithstanding the special legislation in 1855 providing for the maintenance of part of the road by the commissioners, it only "ceased to be a turnpike road" within the meaning of s. 13 of the Highways and Locomotives (Amendment) Act, 1878, on the expiration of the turnpike trust between 1870 and the date of passing that Act, and therefore should be "deemed to be a main road," and one half of the expenses of the maintenance of the part within the highway area should be paid to the highway authority by the county authority under s. 13.—Judgment of the Queen's Bench Division (13 Q. B. D. 623, 51 L. T. 707, 48 J. P. 406, 1884 Dig. col. 195) affirmed. *NEWTON IN MAKERFIELD IMPROVEMENT COMMISSIONERS v. JUSTICES OF LANCASTER*

[15 Q. B. D. 25, 54 L. J. M. C. 1, 52 L. T. 337,  
[33 W. R. 488, 49 J. P. 149 (C.A.)]

10. — *Repair—Use of Steam Rollers—Statutable Rights—Injury to Property in the exercise of such Rights.* The Plaintiffs, a gas company, laid down pipes under the surface of certain streets, as they were bound by statute to do, for the purpose of supplying gas to light the street and houses in the streets. The streets were vested in the defendants, the vestry of the parish, by certain statutes which gave them the authority of the surveyor of highways, and with the duty to repair, but without prescribing any particular mode of repair. The Defendants used steam rollers for the repair of the streets, as being a mode of repair most advantageous to both the ratepayers and

**HIGHWAY—continued.**

the public, but the rollers they used were so heavy as to frequently injure the Plaintiff's pipes, though the pipes were sufficiently below the surface as not to have been injured by the ordinary mode of repair if such rollers had not been used:—*Held*, affirming the decision of Field, J. (1 C. & E. 368), that the Plaintiffs were entitled not only to recover damages for the injury which had been done, but also to have an injunction to restrain the Defendants from using steam rollers in such a way as to injure the pipes of the Plaintiffs. *GAS LIGHT & COKE COMPANY v. VESTRY OF ST. MARY ABBOTT'S, KENSINGTON* 15 Q. B. D. 1, 54 L. J. [Q. B. 414, 53 L. T. 457, 33 W. R. 392,  
[1 C. & E. 368 (C.A.)]

11. — *Repair—Extraordinary Traffic—Agricultural Road—New Quarry—Highways and Locomotives Act, 1878* (41 & 42 Vict. c. 77), s. 33.] An agricultural road had long been used for agricultural traffic only, being three-fourths of a mile long and somewhat steep. A new quarry was opened, and heavy waggons, drawn by three or more horses, were used, and the wheels had to be chained, and brakes used, causing great increase of expenditure. *Held*, by Grove and Hawkins, JJ., that this was "extraordinary traffic," and that the justices were right in making an order on those causing such traffic to pay for the extra expenditure. *TONBRIDGE HIGHWAY BOARD v. SEVENOAKS HIGHWAY BOARD*  
[33 W. R. 306, 49 J. P. 340]

12. — *Repair—Excessive Traffic—Contractor and Sub-Contractor—Person by whose act excess is caused—Highways and Locomotives Act, 1878* (41 & 42 Vict. c. 77), s. 23.] L. was a contractor with the Government to erect a rifle range, and employed D., a sub-contractor, to cart the stone. Nothing in the contract between L. and D. specified the mode of conveying the stone. D. used traction engines, and caused excessive injury to the highway. *Held*, by Coleridge, C.J., and Mathew, J., that L. was not the person liable under the above section, but that D. was liable; being the only person by whose order the excessive weights were carried. *LAPTHORN v. HARVEY*  
[49 J. P. 709]

— *Diversion—Duty to fence.*

See NEGLIGENCE. 9.

— *Kerb stones—Mandatory injunction to remove—Compensation.*

See PUBLIC HEALTH ACTS. 9.

**HOLDING OVER.**

See LANDLORD AND TENANT—HOLDING OVER.

**HOTEL—Licence.**

See INN.

**HOUSE—Inhabited house duty.**

See REVENUE. 6, 7.

— *"Injurious affected"—Compensation—Public house.*

See LANDS CLAUSES ACT. 1.

— *Lease of furnished—Implied warranty.*

See LANDLORD AND TENANT—LEASE.  
3—5.

LANDLORD AND TENANT—LIABILITIES. 1.

**HOUSE—continued.**

— Married woman's—Trespass—Right to sue for.

See HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS. 6.

— Used for prostitution.

See NUISANCE. 1.

**HOUSE OF COMMONS**—Journals—Practice—Evidence.

See OATH.

**HOUSE OF LORDS**—Appeal to—Bankruptcy of Appellant.

See PRACTICE—APPEAL. 1.

**HUSBAND AND WIFE:—**

I. DIVORCE.

II. MARRIED WOMEN'S PROPERTY ACTS.

III. SEPARATION DEED.

IV. WIFE'S PROPERTY.

**I. HUSBAND AND WIFE—DIVORCE—Condonation—Damages.]** Condonation of the wife's adultery is no answer to the husband's claim for damages against the co-respondent.—*Norris v. Norris, Lawson and Mason* (4 Sw. & Tr. 237, 30 L. J. (P. & M.) 111) distinguished. *POMERO v. POMERO AND HADLEY* 10 P. D. 174, 54 L. J. P. 93, [34 W. R. 124]

2. — Condonation of wife's adultery—Subsequent adultery of husband—Wife's right to divorce—English cases considered. *CUMMING v. CUMMING* - 46 Amer. R. 476 (U.S.)

3. — *Conduct conducing to Adultery.]* A Petitioner and Respondent separated by mutual consent shortly after the marriage, and only met once afterwards. The Petitioner allowed her a small sum for her support, and sixteen years after the marriage discovered that she had committed adultery:—*Held*, by Hannen, P., under the circumstances, that the Petitioner had conduced to the adultery. Petition dismissed. *HAWKINS v. HAWKINS AND HOPE* 10 P. D. 177, 54 L. J. P. 94, [34 W. R. 47]

4. — *Nullity by reason of Insanity.]* The burden of shewing that the Respondent was insane at the time of the marriage lies upon the party asserting it, and the Court has to determine whether the Respondent was capable of understanding the nature of the contract, and the duties and responsibilities which it creates, and was free from the influence of morbid delusions upon the subject. *DURHAM v. DURHAM. HUNTER v. EDNEY. CANNON v. SMALLEY* - 10 P. D. 80

5. — *Nullity—Impotence—Delay—Sincerity.]* At the end of seven years' cohabitation a marriage had not been consummated through the impotence of the alleged husband. The alleged wife subsequently cohabited with another man, and upon the alleged husband discovering her misconduct she instituted a suit for nullity of marriage against him, and he a suit for dissolution of marriage against her:—*Held*, that the proof of impotence being clear her conduct did not shew such a want of sincerity as to deprive her of her right to have the marriage annulled.—When the impotence is undoubted mere delay is not sufficient to disentitle the injured party to relief. *M. OTHERWISE D. v. D.* - 10 P. D. 75, 54 L. J. P. [68, 33 W. R. 657]

**I. HUSBAND AND WIFE—DIVORCE—contd.**

— Judicial separation—Aggravated assault—Justices' jurisdiction.

See JUSTICES. 3.

— Practice.

See PRACTICE—DIVORCE.

— Scotch law—Nullity.

See SCOTCH LAW. 4.

**II. HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS—**

*Action by Husband against Wife—Separate Estate—Money paid by Husband for Wife before and after Marriage—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2, 3, 4; ss. 3, 12, 13.]* A husband is entitled to maintain an action against his wife, and to charge her separate property for money lent by him to her after their marriage, and for money paid by him for her after their marriage at her request made before or after their marriage, but he is not entitled, even since the Married Women's Property Act, 1882, to maintain any action against her for money lent to her or money paid for her before their marriage at her request. *BUTLER v. BUTLER* - 14 Q. B. D. 831, [55 L. J. Q. B. 55]

[*Affirmed by C.A., 34 W. R. 132, W. N. (1885) 204.*]

2. — *Contingent Interest, vesting after 1883—Voidable Settlement—45 & 46 Vict. c. 75, s. 5.]* An infant, on her marriage before 1883, settled a share under a will to which she was entitled contingently on attaining twenty-one, and, having attained twenty-one after 1883, elected to avoid the settlement, and claimed to be entitled to the share as separate property. *Held*, by Bacon, V.C., that, under the above section, she was so entitled. *Re DIXON. DIXON v. SMITH* - 54 L. J. Ch. 964

3. — *Contract—Separate Property—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (3) and (4)—Order of Reference by Consent.]* Sect. 1 (3) and (4) of the Married Women's Property Act, 1882, have not a retrospective operation so as to include contracts entered into by a married woman before the date of the commencement of the Act.

But an order made after the commencement of the Act by consent in an action by a creditor against a married woman in respect of her contract before the Act, by which order all questions under the contract were referred to an arbitrator, and the parties bound themselves to abide by, obey, perform, and keep the award, is an agreement by the married woman after the commencement of the Act, within sect. 1 (3), and therefore by sect. 1 (4) any separate estate which she had at or after the date of such agreement is liable to pay the amount found by the award to be due from her under the contract. So *held* by Chitty, J. *CONOLAN v. LEYLAND* 27 Ch. D. 632, 54 L. J. Ch. [123, 51 L. T. 895]

4. — *Contract by Married Woman before the Act not binding on after-acquired Separate Property—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 4.]* Sub-s. 4 of s. 1 of the Married Women's Property Act, 1882, is not retrospective, and, therefore, in an action on a contract made by a married woman before the passing of that Act, judgment cannot be ordered in such terms as to be available against

## II. HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS—continued.

separate property to which the Defendant became entitled after the date of the contract. *TURNBULL v. FORMAN* 15 Q. B. D. 234, 54 L. J. Q. B. 489, [53 L. T. 128, 33 W. R. 768, 49 J. P. 708 (C.A.)]

5. — *Contract—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 1, sub-s. 4.] The contract entered into by a married woman "to bind her separate property," referred to in sect. 1, sub-sect. 4, of the Married Women's Property Act, 1882, is a contract entered into at a time when she has existing separate property.

If the married woman commits a breach of such a contract, and a judgment is recovered against her for the breach, the judgment can be enforced against any separate property which she then has.—But sect. 1, sub-sect. 4, does not enable a married woman who has no existing separate property to bind by a contract any separate property which she may possibly thereafter acquire. *Re SHAKESPEAR (or SHAKESPEAR). DEAKIN v. LAKIN* [30 Ch. D. 169, 55 L. J. Ch. 44, 53 L. T. 145, [33 W. R. 744]

6. — *House in sole occupation of Wife as her Separate Property—Trespass for entering—Right of Wife to sue—Married Women's Property Acts, 1870 and 1882* (33 & 34 Vict. c. 93, and 45 & 46 Vict. c. 75).] A married woman in the sole occupation of a house, bought by her out of her own earnings, since the Married Women's Property Act, 1870, can now, after the Married Women's Property Act, 1882, sue alone, without her husband, in an action for trespass, a person who has entered such house against her will, though he did no injury to the house and entered it with the authority of her husband, but for a purpose unconnected with the husband's desire to live with his wife.—*Query*, if the husband has himself a right to enter such house. *WELDON v. DE BATHE* [14 Q. B. D. 339, 54 L. J. Q. B. 113, [53 L. T. 520, 33 W. R. 328 (C.A.)]

7. — *Practice—Policy for benefit of Wife and Children of Assured—Petition for Appointment of Trustees—Title—Married Women's Property Acts*; 1870 (33 & 34 Vict. c. 93), s. 10; 1882 (45 & 46 Vict. c. 75), ss. 11, 22.] A petition (presented since the coming into operation of the Married Women's Property Act, 1882), for the appointment of trustees of the proceeds of a life policy effected by a husband, under the provisions of the Married Women's Property Act, 1870, for the benefit of his wife and children, ought to be entitled in the matter of the Act of 1882. *Re SOUTAR'S POLICY TRUST* 26 Ch. D. 236, 54 L. J. [Ch. 256, 50 L. T. 262, 32 W. R. 701]

8. — *Reversionary Interest—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 5—*Accruer of Title in Possession after Commencement of Act.*] Property to which a married woman was, at the commencement of the Married Women's Property Act, 1882, entitled in reversion or remainder, and which since the Act has fallen into possession, is within sect. 5, and may be transferred and paid to her upon her separate receipt. *BAYNTON v. COLLINS* 27 Ch. D. 604, [53 L. J. Ch. 1112, 51 L. T. 681, 33 W. R. 41]

9. — *Reversionary Interest—Devise of Real Estate for Life and in Remainder—Marriage of*

## II. HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS—continued.

*Female Reversioner in 1878—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 5—*Death of Tenant for Life in 1884.*] Testator, who died in 1875, devised his real estate to his wife for life, with remainder to his children. One daughter married in 1878, and the tenant for life died in 1884:—

*Held*, by Kay, J., following the decision in *Baynton v. Collins* (*supra*), that under the operation of sect. 5 of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), the married woman's share in the estate was her separate property, and could be disposed of by her without the concurrence of her husband. *Re THOMPSON AND CURZON* - 29 Ch. D. 177, 54 L. J. Ch. 610, [52 L. T. 498, 33 W. R. 688]

10. — *Reversionary Interest—Accruer of Title—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 5.] Where a married woman, who was at the commencement of the above Act contingently entitled to a share in a fund, subsequently acquired a vested interest in it,—*Held*, by Kay, J., that the share was not her separate property.

*Baynton v. Collins* (*supra*) and *Re Thompson and Curzon* (*supra*) not followed. *Re ADAME'S TRUSTS* 54 L. J. Ch. 878, 53 L. T. 198, 33 W. R. [834, W. N. (1885) 153]

11. — *Vested Interest in Remainder becoming Interest in Possession after 1882—Accruer of Title—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), s. 5.] Property to which a married woman was, at the commencement of the above Act, entitled for a vested interest in remainder, and which afterwards became an interest in possession, is not property "her title to which has accrued after the commencement of the Act" within the meaning of the above section.

So *held*, by Pearson, J.

*Baynton v. Collins* (*supra*) and *Re Thompson and Curzon* (*supra*) not followed. *Re TUCKER. EMANUEL v. PARFITT* 54 L. J. Ch. 874, 52 L. T. [923, 33 W. R. 932, W. N. (1885) 148]  
See also *Re HUGHES' TRUSTS* W. N. (1885) 62

12. — *Will—Unity of Person—Bequest to Husband and Wife and Third Person—Separate Use—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), ss. 1, 5.] A testatrix, by her will, dated in 1880, gave her residuary personal estate "to C. J. M., and J. H. and E. his wife" to and for their own use and benefit absolutely, and appointed C. J. M., and J. H. and E. H. his wife, her executors.

The testatrix died in 1883, after the commencement of the Married Women's Property Act, 1882. J. H. and E. H. were married in 1864.

*Held*, reversing the decision of Chitty, J. (24 Ch. D. 222, 52 L. J. Ch. 680, 49 L. T. 168, 31 W. R. 885, 48 J. P. 23, 1883 Dig. col. 177), that as the will was made before the Married Women's Property Act came into operation, it must be construed in accordance with the law at that time, and that the three residuary legatees were entitled to the personal estate as joint tenants, C. J. M. taking one moiety and J. H. and E. H., his wife, taking the other moiety between them,



**II. HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS—continued.**

J. H. in his own right, and his wife for her separate use.

How the Court would have construed the gift if the will had been made after the Married Women's Property Act, 1882, came into operation, *quære*. *Re MARCH. MANDER v. HARRIS*

[27 Ch. D. 166, 54 L. J. Ch. 143, 51 L. T. 380, [32 W. R. 941 (C.A.)]

13. — *Will—After-acquired Property—Married Women's Property Act, 1882* (45 & 46 Vict. c. 75), ss. 1, 23—*Wills Act* (1 Vict. c. 26), s. 24.] Sect. 1, sub-sect. 1, of the Married Women's Property Act, 1882, gives a married woman power to dispose by will only of property of which she is seised or possessed while she is under coverture.

Consequently, notwithstanding sect. 24 of the Wills Act, her will made during coverture is not, unless it is re-executed after she has become discover, effectual to dispose of property which she acquires after the coverture has come to an end. *Re PRICE. STAFFORD v. STAFFORD* (or *PRICE v. STAFFORD*)— 28 Ch. D. 709, 54 L. J. Ch. 509, 52 [L. T. 430, 33 W. R. 520]

— Action by married woman for tort—Joinder of husband.

*See PRACTICE—PARTIES. 7.*

— Action by married woman for tort during coverture—Limitation.

*See LIMITATIONS, STATUTE OF. 5.*

— Injunction—Undertaking as to damages—Enforcement.

*See PRACTICE—INJUNCTION. 2.*

— Post-nuptial settlement—Restraint on anticipation—Election—Compensation.

*See SETTLEMENT—AFTER-ACQUIRED PROPERTY. 4.*

— Proof by wife in husband's bankruptcy.

*See BANKRUPTCY—PROOF. 7.*

— Security for costs—Action by married woman.

*See PRACTICE—COSTS. 13, 14.*

— Settled Estates Act—Examination as to consent.

*See SETTLED ESTATES ACTS. 1—3.*

**III. HUSBAND AND WIFE—SEPARATION DEED—***Agreement by Wife not to sue for Restitution of Conjugal Rights.*] By a deed of separation between the husband, the wife, and a trustee, containing a recital that the husband and wife had agreed to live separate, the husband covenanted with the trustee to pay the wife £25 a year till their only child should attain twenty-one, or die under that age or become chargeable to the husband, and to allow her to enjoy all her present and future property for her separate use, and the trustee covenanted with the husband to indemnify him against the debts of the wife, and that the wife should not take any proceedings to compel him to live with her. The annuity was paid until the child died, a minor. The wife after this presented her petition for the restitution of conjugal rights, and the husband pleaded the separation deed. Butt, J., dismissed the petition:—*Held*, that an agreement entered into by a wife

**III. HUSBAND AND WIFE—SEPARATION DEED—continued.**

for valuable consideration, and without fraud or duress, that she will not take proceedings to compel her husband to return to cohabitation, is a bar to such proceedings:—*Held*, also, that the recital of the agreement to live separate, being contained in a deed to which the wife was a party, was evidence of a contract by her to allow her husband to live separate from her, and that after accepting benefits under the deed, she could not be heard to say that she had not contracted, because the covenant not to sue was entered into only by the trustee and not by her.—*Marshall v. Marshall* (5 P. D. 19, 48 L. J. P. 49) approved. *CLARK v. CLARK*

[10 P. D. 188, 54 L. J. P. 57, 52 L. T. 234, 33 [W. R. 405, 49 J. P. 516 (C.A.)]

2. — *Covenant, Absolute, to pay Annuity—Adultery by Wife—Condition Precedent—Independent Covenants—Covenant against Molestation—Molestation, what amounts to.*] In a separation deed a covenant, by which the husband undertakes to pay his wife an annuity without, restricting his liability to such time as she shall be chaste, is good and is not against public policy, and the covenant remains in force and the annuity continues payable, although the wife afterwards commits adultery.—But, *semble*, per Cotton, L.J., on the authority of *Evans v. Carrington* (2 De G. F. & J. 481), that if the covenant had been inserted in the separation deed with the intent that the wife might be at liberty to commit adultery, the deed would have been void.—Covenants in a separation deed, by which respectively the husband has covenanted to pay an annuity to a trustee for the wife, and the trustee has covenanted that the wife shall not molest the husband, must be construed as independent covenants in the absence of any express terms making them dependent, and therefore a breach of the covenant, that a wife shall not molest the husband, is not an answer to an action for the annuity.—Neither adultery alone by the wife, nor adultery by her followed by the birth of a spurious child, is a breach of a covenant in a separation deed against molestation by the wife.—But, *semble*, adultery by the wife followed by the birth of a spurious child whom she puts forward as the child of her husband, especially if this is done with intent to claim a title or property to which the legitimate offspring of her husband would be entitled, is evidence of a breach of a covenant against molestation by her.—By Brett, M.R.; in order to constitute a breach of a covenant in a separation deed against molestation by a wife, some act must be done by her or by her authority with intent to annoy her husband and which is in fact an annoyance to him, or at least some act must be done by her or by her authority with a knowledge that it must of itself without more annoy her husband, or annoy a husband with reasonable and proper feeling.—Decision of Denman and Manisty, JJ. (12 Q. B. D. 539, 53 L. J. Q. B. 410, 50 L. T. 662, 32 W. R. 718, 1884 Dig. col. 202) affirmed. *FEABON v. EARL OF AYLESFORD* [14 Q. B. D. 792, 54 L. J. Q. B. 33, 52 L. T. 954, [33 W. R. 331, 49 J. P. 596 (C.A.)]

3. — *Covenant with Trustees to maintain Children—Right of Child to sue—Cestui que trust—Stranger suing on Covenant—Practice—Action*

### III. HUSBAND AND WIFE — SEPARATION DEED—continued.

— *Parties — Mistake — Amendment — Order XVI., r. 2.*] To entitle a third person, not named as a party to a contract, to sue either of the contracting parties, that third person must possess an actual beneficial right which places him in the position of *cestui que trust* under the contract.

By a deed of separation between husband and wife, the husband covenanted with the trustees to pay to them an annuity for the use of the wife and two eldest daughters, and also to pay to the trustees all the expenses of the maintenance and education of the two youngest daughters, provided that the trustees permitted them to go to such school as the husband should direct, and provided also that the covenants by the trustees were duly observed and performed: provided, also, that the two youngest daughters should live at such place (being reasonable and proper for the purpose) as the husband should direct, and should be maintained and educated at his expense, the husband and wife to have all reasonable access to them. And the trustees covenanted with the husband that they would, during the continuance of the separation, keep him indemnified against all liability for the maintenance of the wife and two eldest daughters, and against all molestation by them, and that the wife would not take any proceedings against the husband for alimony, except as aforesaid; and that they, the trustees, would, on the husband defraying all the expenses connected therewith, carry out his desires as to the school at which the two youngest daughters should be educated, and the place at which they should live, and would permit them, if they so desired, and without any interference on the part of the wife, to accept any invitation of the husband to reside with him.

On one of the two youngest daughters subsequently attaining sixteen, the husband refused any longer to maintain her, whereupon she brought an action, by her next friend, against the husband and the trustees of the separation deed to enforce the husband's covenant, the trustees having refused to allow their names to be used as Plaintiffs, and Bacon, V.C., gave a judgment for enforcing the covenant:—*Held*, on appeal, that upon the construction of the deed, the Plaintiff was not in the position of *cestui que trust* under the covenant so as to entitle her to maintain the action, but liberty was given to her, under the Rules of the Supreme Court, 1883, Order XVI., r. 2, to amend the writ, by adding the trustees, the wife and the other daughters, or any of them, as Plaintiffs.

*Touche v. Metropolitan Railway Warehousing Co.* (Law Rep. 6 Ch. 671) considered.

The trustees refusing to be joined as co-Plaintiffs the statement of claim was amended by making the wife a co-Plaintiff:—

*Held*, that she had such an interest as entitled her to sue, the deed being an arrangement between the husband and wife, and the trustees being introduced on her behalf in order to get over the difficulty that the husband and wife could not at law sue each other, so that the trustees were to be considered trustees for the wife, and if they refused to sue she could sue in equity.

After the separation deed the husband committed adultery, and a decree was made for judi-

### III. HUSBAND AND WIFE — SEPARATION DEED—continued.

cial separation, giving the custody of the two youngest daughters to the wife. After this the wife applied for increased alimony, which was granted by the President, but his decision was reversed on appeal (7 P. D. 168), both the arguments and the judgment of the Court of Appeal proceeding on the footing (though the Court did not expressly decide the point) that the husband remained liable under the deed to pay for the maintenance and education of the two youngest daughters. He now contended that his covenant was put an end to by the custody of the youngest daughters being given to his wife:—

*Held*, that he was not at liberty to retain the benefit of a decision given on the footing that his liability under the covenant continued, and at the same time to insist that his liability under it had determined, and the appeal was ordered to stand over, with liberty to the wife to apply to the Divorce Court for increased alimony, if she should be so advised. *GANDY v. GANDY* — 30 Ch. D. 57, 54 [L. J. Ch. 1154, 53 L. T. 306, 33 W. R. 808 (G.A.)]

4. — *Separation Agreement — Reconciliation.*] A husband and wife when before the Divorce Court agreed that if judicial separation was decreed the wife should be permitted to enjoy during her life certain furniture. Judicial separation was decreed, and the wife took possession of the furniture. The husband and wife afterwards resumed cohabitation:—

*Held*, by North, J., in an action by the wife to recover the furniture, that the agreement came to an end when cohabitation was resumed:

*Held*, that, as the wife was entitled to the furniture during separation only, she took nothing under 20 & 21 Vict. c. 85, s. 25, which relates to property acquired by a wife during separation. *NICOL v. NICOL* 30 Ch. D. 143, 54 L. J. Ch. 1043, [53 L. T. 140]

5. — *Ward of Court—Custody of Children—Access.*] By a deed of separation made in 1880 between H., a medical officer in the army, and his wife, provision was made as to the custody of their four children (of whom the eldest was eleven and the youngest three years of age) during the approaching absence of the husband in India, after which he was to resume the entire custody of them, but he covenanted that full and free liberty of access to them should be always accorded to the wife, to the extent at least of her having the opportunity of spending one day in every fortnight with them. In 1884 he was ordered to Egypt and proposed to take the first and third of the children with him. Mrs. H. applied for an injunction to restrain him from doing so:—

*Held*, by Pearson, J., that H. was bound by the covenant to keep the children in such a place that Mrs. H. could have free access to them, and that an injunction ought to be granted:—

*Held*, by the Court of Appeal, that the covenant did not bind H. to keep the children in a place where Mrs. H. could conveniently have access to them, and did not preclude him from taking them with him to any place where he might be ordered in the course of his duties, and that the injunction must be dissolved, there being no case made that he was removing them for the purpose of prevent-

**III. HUSBAND AND WIFE — SEPARATION DEED—continued.**

ing Mrs. H. from having access to them. *HUNT v. HUNT* (No. 1) - 28 Ch. D. 608, 52 L. T. 302, [33 W. R. 157 (C.A.)]

**IV. HUSBAND AND WIFE—WIFE'S PROPERTY Administration Action—Married Woman entitled to share of Small Amount—Separate Examination and Affidavit of no Settlement dispensed with.**

*GUEST v. NEAMES* - W. N. (1884) 227

2. — *Chose in Action—Ante-nuptial Parol Agreement to settle—Part Performance—Statute of Frauds, s. 4—Gift by Husband to Wife—Bankruptcy of Husband—Title of Trustee.* On a marriage it was verbally agreed between the husband and the wife that a sum of money standing to the credit of the wife on deposit at a bank in her maiden name should be her separate property. Nothing further was done; but after the marriage the money, with the husband's consent, remained at the bank in the wife's maiden name; and she received the interest on it for two years after the marriage, when she drew the money out of the bank. The trustee in the subsequent liquidation of the husband having claimed payment of the money from the wife as part of her husband's property:—*Held*, by Cave, J. (54 L. J. Q. B. 88, 52 L. T. 265, 33 W. R. 230), that there had been no such part performance by the husband of the parol contract to settle as to take the case out of the Statute of Frauds, and, therefore, that the trustee was entitled to the money subject to the wife's equity to a settlement, if any.—*Held*, by the Court of Appeal, without deciding the question on the Statute of Frauds, that there had been a gift of the money by the husband to the wife after the marriage; that he had become a trustee of it for her as her separate property; and that, consequently, it did not pass to the trustee in his liquidation. *Ex parte WHITEHEAD. Ex parte BOUTH. Re WHITEHEAD* - 14 Q. B. D. 419, [54 L. J. Q. B. 240, 52 L. T. 597, 33 W. R. 471, [49 J. P. 405 (C.A.)]

3. — *Investment, unauthorized — Separate Estate—Restraint on Anticipation—Conveyancing Act, 1881, s. 39.* Trust funds to which a married woman was absolutely entitled, but subject to a restraint on anticipation, were invested upon mortgages of leasehold property, one of which, not being authorized by the trusts of the settlement, the trustees proposed to call in.

The Court, being satisfied that it would be for the benefit of the married woman, made an order, on her application, permitting the investment to continue unchanged. *Re WRIGHT'S TRUSTS*

[15 L. R. Ir. 331]

4. — *Restraint on Alienation and Anticipation—Accumulations.* A testator directed surplus income of real and personal estate, after providing an annuity, to be accumulated during the life of his wife, after her death he gave the capital to his children; he directed that the shares of his daughter should be for their separate use, without power of alienation or anticipation during the wife's life:—

*Held*, by Pearson, J., that his married daughters during the life of their mother were entitled to

**IV. HUSBAND AND WIFE—WIFE'S PROPERTY —continued.**

receive only the income of invested income. *Re SPENCER. THOMAS v. SPENCER* - 30 Ch. D. 183, [55 L. J. Ch. 80, 34 W. R. 62]

5. — *Separate Estate—Restraint on Anticipation — Costs — Proceedings improperly instituted.* A married woman who, under a will, was entitled to income for her separate use, with a restraint on anticipation, instituted (without a next friend) against the trustees proceedings in the course of which she took out a summons which was refused:—

*Held*, by Pearson, J., that the restraint on anticipation did not prevent the Court from giving the trustees liberty to retain their costs of the proceedings out of the married woman's income. *Re ANDREWS. EDWARDS v. DEWAR* - 30 Ch. D. 159, [54 L. J. Ch. 1049, 53 L. T. 422, 34 W. R. 62]

6. — *Separate Property of Wife received by Husband—Whether a Gift to Husband.* A testator, who died in 1860, bequeathed a part of the residue of his personalty to his daughter S., a married woman, for her separate use. Shares in certain companies were allotted to her in respect of this bequest, which shares were transferred by the executor of the will into her husband's name. In 1862 a deed of release was given to the executor, which was executed by both S. and her husband. S. and her husband lived together on affectionate terms until 1884, when the husband died, having by his will bequeathed to his wife a legacy, and given her a life interest in all his property. Between 1860 and 1884 the husband always received the dividends on the shares. He kept very careful books of account, from which it appeared that he did not pay the dividends to his wife, although he did pay to her the dividends of certain other property, which also belonged to her, for her separate use. Before 1862 the shares were always referred to in the books as having originally belonged to the wife, but this mode of reference was discontinued after that date. The wife died a few days after her husband, and the question was whether the shares, which still remained *in specie*, formed part of her estate or of her husband's:—

*Held*, by Kay, J., that the mere transfer of the shares into the husband's name was not *per se* evidence of a gift of the same to him; that the burden lay upon those who represented him to shew that the wife had given him the shares, which burden they had not discharged: and that the shares must, therefore, be treated as forming part of the wife's estate.

After the above decision, it appeared that during the wife's lifetime other shares were allotted in respect of the original shares, and that the husband disposed of them and made a profit of £177:—

*Held*, by Kay, J., that this sum belonged to the wife's estate, the proceeds of sale being an accretion, and following the original shares. *Re CURTIS. HAWES v. CURTIS* - 52 L. T. 244, [W. N. (1885) 29, 55]

— Election.

See ELECTION. 2—5.

— Equitable tenant for life—Right to receive rents.

See SETTLED LAND ACTS. 2.

**IV. HUSBAND AND WIFE—WIFE'S PROPERTY**  
—*continued.*

- Joint investments—Survivorship.  
See **BANKER**. 1.
- Married Women's Property Acts.  
See **HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS**.
- Mortgage by wife—Duty of mortgagees to inquire as to settlement.  
See **MORTGAGE—PRIORITY**. 9.
- Power—Perpetuities—Remoteness.  
See **POWER**. 9.
- Restraint on anticipation—Judgment summons.  
See **ARREST**. 1.
- Separate estate vested in trustees—Judgment—Receiver.  
See **PRACTICE—RECEIVER**. 6.
- Separate property in possession of husband—Reputed ownership.  
See **BANKRUPTCY—ORDER AND DISPOSITION**. 4.
- Stock—Injunction to restrain transfer—Undertaking as to damages.  
See **PRACTICE—CHARGING ORDERS**.

**HUSBAND AND WIFE—Action against—Affidavit as to documents.**  
See **PRACTICE—DISCOVERY—DOCUMENTS**. 3.

- Marriage settlement.  
See **SETTLEMENT**.
- Married woman a "bare trustee"—Trust for sale.  
See **VENDOR AND PURCHASER—CONVEYANCE**. 2.
- Married woman *cestui que trust*—Concurrence in breach of trust.  
See **TRUSTEE—LIABILITIES**. 2.

## I.

**ILLEGALITY—Agreement.**See **CONTRACT**. 7—10.

- Apothecaries Act—Unqualified person—Right to sue.  
See **MEDICAL PRACTITIONER**.
- Contract not under seal—Corporation.  
See **PUBLIC HEALTH ACTS**. 3, 4.
- Payment of bankrupt's money to stifle criminal prosecution.  
See **BANKRUPTCY—TRUSTEE**. 6.
- Unregistered company.  
See **COMPANY—UNREGISTERED COMPANY**.

**IMPROVEMENTS—Mortgagee—Expenditure by, after redemption decree.**  
See **MORTGAGE—MORTGAGEE IN POSSESSION**. 2.

- Settled estate—Tenant for life.  
See **SETTLED LAND ACTS**. 4, 5, 8.
- Tenants—Compensation.  
See **LANDLORD AND TENANT—IMPROVEMENTS**.

**INCOME—Professional man's—Setting aside, for creditors.**See **BANKRUPTCY—ASSETS**. 2.**INCOME TAX.**See **REVENUE**. 1—5.**INDECENT EXPOSURE—Public place.**See **CRIMINAL LAW**. 11.**INDEMNITY—Claim against third party for.**See **PRACTICE—THIRD PARTY**.

## — Stake-holder—Objection by claimant indemnifying to interpleader issue.

See **INTERPLEADER**.

**INFANT—Custody—Habeas Corpus—36 & 37 Vict. c. 12, s. 1—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 10.]** In the exercise of its discretion under 36 & 37 Vict. c. 12, s. 1, and s. 25, sub-s. 10 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), the Court will look at all the surrounding circumstances before they will accede to the application of the father of a female child of tender years to remove her from the custody of the mother and other relations whose conduct with regard to the child is unimpeached, and place her under his control.—A mariner who had no fixed home, and who had already married a woman who left him and went to America more than seven years before and (as he said) died there, went through the ceremony of marriage with another woman at a registry-office at Portsmouth. Shortly after her marriage, the second wife, being informed by a stranger that she had received a letter from the first wife after the ceremony at the registry-office, quitted her supposed husband, and went to reside with her parents at Southampton where she gave birth to a female child. She afterwards took proceedings against her husband for bigamy; but, for want of proof that the first wife was living at the time of the second marriage, these became abortive.—The child having reached the age of nine, the father (without shewing any efforts to ascertain whether his first wife was living or not) applied to a Judge at Chambers for a *habeas corpus* to obtain its custody. The Judge refused the application. The father appealed.—The Court, not being satisfied that the second was a valid marriage, or that the father was in a position properly to maintain and educate the child, *Held*, by Lindley, L.J., and Butt, J., that the Judge had wisely exercised his discretion, and dismissed the appeal, and also that the failure of the prosecution for bigamy was not entitled to any weight upon a motion of this kind. *Re ETHEL BROWN (or Re ROWE)* 13 Q. B. D. 614, 51 L. T. [793, 33 W. R. 79]

2. — *Custody—Guardian—Nationality—Jurisdiction—Grandchild born Abroad of natural-born British Subject—Status of British Subject—7 Anne, c. 5—4 Geo. 2, c. 21, s. 1—13 Geo. 3, c. 21, s. 1—International Comity.]* If an infant be born abroad whose paternal grandfather was a natural-born British subject, the Court has jurisdiction to appoint a guardian of such infant, although the infant is resident abroad and has no property in this country.

A Frenchwoman, who was the mother of such an infant, and entitled by the law of France to the status of natural guardian of the infant, was

**INFANT—continued.**

not a person who would have been appointed guardian if she and the infant had been domiciled in England, and she had brought proceedings in the French Courts for the appointment of guardians, which proceedings had been directed to stand over until it should be ascertained what course the English Courts would adopt:—

*Held*, by Kay, J. (52 L. T. 846, 33 W. R. 724), that this was a case in which the English Court should exercise its jurisdiction; and a guardian of the infant appointed accordingly; and *held* by the Court of Appeal, that under the circumstances the decision of the Court below was right. *Re WILLOUGHBY (AN INFANT)* 30 Ch. D. 324, 54 L. [J. Ch. 1122, 33 W. R. 850 (C.A.)]

3. — *Education—Jurisdiction.* Infants interested in real estate in England, whose father was dead, were living in charge of their mother, who was resident out of the jurisdiction, and was one of their testamentary guardians. At the instance of their other two guardians an order was made declaring in what faith they ought to be educated. *Re MONTAGU. Re WROUGHTON. MONTAGU v. FESTING* 28 Ch. D. 82, 54 L. J. Ch. 397, [33 W. R. 322]

4. — *Maintenance—Accumulations for Twenty-one years—Tenant for Life—Infant remainderman.* A testator devised to trustees real estate, producing an estimated income of £1300 a year, in trust to accumulate the rents and profits at compound interest for a term of twenty-one years, and at the end of the said term, or as soon as circumstances would permit, to lay out the accumulations in the purchase of lands, to be settled subject to the said trust term to the use of A., for life, remainder to B., the eldest son of A., for life; remainder to B.'s first and other sons in tail male; remainder to A.'s younger sons (then in being) successively, for life; with like remainders to their first and other sons in tail male respectively; with several remainders over. The testator also bequeathed his residuary personal estate (which was above the value of £58,000) in trust to be invested in the purchase of lands, to be settled to the like uses as were thereinbefore directed, in relation to the accumulations of the rents and profits of the lands comprised in the term.

The directions as to accumulation contained in the will were repeated in the codicils. A.'s sons were minors. An application was made on behalf of the eldest for an allowance to A. out of the rents, profits, and income, for the maintenance of the sons, on the ground that A.'s own means were not sufficient to enable him to educate and maintain them suitably to their prospective position. The accumulations at the expiration of the term would, as was calculated, exceed £160,000: *Held*, affirming the decision of the Vice-Chancellor (13 L. R. Ir. 872, 1884 Dig. col. 210), that the Court had no power to allow maintenance out of the rents directed to be accumulated. *Havelock v. Havelock* (17 Ch. D. 807, 50 L. J. Ch. 778, 44 L. T. 168, 29 W. R. 859) discussed and disapproved of. *KEMMIS v. KEMMIS* 15 L. R. Ir. 90 [(C.A.)]

5. — *Maintenance—Past—Past Accumulations—Conveyancing Act, 1881 (44 & 45 Vict.*

**INFANT—continued.**

c. 41), s. 43 (i), (ii).] Under the above subsections, trustees have a discretionary power to apply past accumulations of income in payment of past maintenance. (But see *memorandum*, W. N. (1884) 242.) *Re PITTS' SETTLEMENT. COLLINS v. PITTS* W. N. (1884) 225, 242

6. — *Maintenance—Contingent Legacy to Infant—Intermediate Income—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 43.* Sect. 43 of the Conveyancing and Law of Property Act, 1881, empowering trustees to apply towards the maintenance of an infant the income of property held in trust for him contingently on his attaining the age of twenty-one years, does not authorize the allowance of maintenance where, apart from the Act, the infant on attaining twenty-one would only be entitled to the legacy without interest.

*Decision of Kay, J.* (28 Ch. D. 291, 54 L. J. Ch. 212, 51 L. T. 891, 33 W. R. 334), affirmed. *Re COTTON* (1 Ch. D. 232), and *Re GEORGE* (5 Ch. D. 837) discussed in the Court below. *Re DICKSON. HILL v. GRANT* 29 Ch. D. 331, 54 L. J. Ch. 510, [52 L. T. 707, 33 W. R. 611 (C.A.)]

7. — *Maintenance—Jurisdiction—Discretion of Trustees.* A female infant was entitled contingently on her attaining twenty-one, or marrying, to a fund of which her deceased mother had been tenant for life. The trustees had power to "apply all or any part" of the income (about £538 a year) for her maintenance and education. On a summons in the matter of the infant, Bacon, V.C., held that he had jurisdiction to control the discretion of the trustees as to the *quantum* to be allowed, and made an order on them to pay £400 a year to the father for her maintenance and education. The trustees appealed, and in answer to an inquiry by the Court stated their intention to allow £250 to the father for her maintenance and education:—

*Held*, that the order of the Vice-Chancellor was irregular, and must be discharged, the Court having no jurisdiction on a summons in the matter of an infant to make any order for payment by trustees or other persons.

Whether the Court could control the discretion of the trustees as to the amount to be allowed for maintenance and education, so long as such discretion was honestly exercised, *quære*. *Re LORTHOUSE (AN INFANT)* 29 Ch. D. 921, 54 [L. J. Ch. 1087, 53 L. T. 174, 33 W. R. 668 (C.A.)]

8. — *Property—Real Property—Lease—Surrender of—*[1 Geo. 4 & 1 Will. 4, c. 65, ss. 12, 14.] The provisions of the Act 11 Geo. 4 & 1 Will. 4, c. 65, for the surrender of a lease to which an infant is entitled, apply to a lease to which an infant is only beneficially entitled, the legal estate being vested in a trustee for him. *Re GRIFFITHS (AN INFANT)* 29 Ch. D. 248, 54 L. J. Ch. 742, 53 [L. T. 262, 33 W. R. 728]

9. — *Ward of Court—Leave to take Ward of Court out of the Jurisdiction.* A resident in Jamaica died leaving two children, who were born there, and resided there with their mother till 1875, when the elder, a daughter, was sent to England to be educated. The mother came to England in 1876 to place her son at school, and returned to Jamaica in 1878. In 1880 she came

**INFANT**—*continued.*

to England to see her children and had remained there, the daughter, upon leaving school, living with her. With the above exceptions the mother had always lived in Jamaica, and regarded it as her home. She now wished to return thither permanently, and to take with her the daughter aged twenty years and three months, the son, who was apprenticed to an engineer, remaining in England. The children were wards of Court, and the mother had been appointed by the Court sole guardian:—

*Held*, by Kay, J., that the Court would not allow a ward of Court to be taken out of the jurisdiction except under very special circumstances, and that there were not in the present case any such special circumstances as would justify giving the permission:

*Held*, on appeal, that leave may be given to take a ward out of the jurisdiction without a case of necessity being shewn, the Court having only to be satisfied that the step is for the benefit of the ward, and that there is sufficient security that future orders will be obeyed. Leave was accordingly given upon a relative resident in England being appointed guardian along with the mother. *Re CALLAGHAN. ELLIOTT v. LAMBERT* 28 Ch. D. [188, 54 L. J. Ch. 292, 52 L. T. 7, 33 W. R. 157 [(C.A.)]

10. — *Ward of Court—Practice—Dividends of Minors' fortunes paid to Father.*] Order to pay the accrued and future dividends of minors' fortune to their father, he undertaking to apply the dividends to the maintenance, clothing, and education of the minors; the Court being satisfied that, under the circumstances of the case, such order would be for the benefit of the minors. *Re BIRCH'S TRUSTS* - - - 15 L. R. Ir. 380

- Administration—Right to, at expense of estate.  
*See PRACTICE—CHAMBERS.* 3.
- Defendant—Withdrawal of defence—Affidavit.  
*See PRACTICE—MOTION FOR JUDGMENT.* 3.
- Executor, payments by, for benefit of—Interest.  
*See INTEREST.* 2.
- Infants' Custody Act—Petition *in forma pauperis*.  
*See PRACTICE—PAUPER.* 1.
- Larceny by—Bailee.  
*See CRIMINAL LAW.* 12.
- Property — Settled estate — Infant with powers of tenant for life.  
*See SETTLED LAND ACTS.* 6.
- Settlement by—Contingent interest vesting after 1883.  
*See HUSBAND AND WIFE — MARRIED WOMEN'S PROPERTY ACTS.* 2.
- Small sum in Court payable to—Post Office Savings Bank.  
*See PRACTICE—PAYMENT OUT OF COURT.*
- Ward of Court—Custody—Access—Separation deed.  
*See HUSBAND AND WIFE—SEPARATION DEED.* 5.

**INFORMATION**—Attorney-General — Penalty—Appeal.

*See PRACTICE—APPEAL.* 5.

— Attorney-General of Duchy of Lancaster.  
*See DUCHY OF LANCASTER.*

— Criminal—Newspaper—Libel.  
*See CRIMINAL LAW.* 15.

**INHABITED HOUSE DUTY.**

*See REVENUE.* 6, 7.

**INHERITANCE**—*Ex parte paternâ or ex parte maternâ.*

*See DESCENT.*

— Trinidad—Status of children born before marriage.  
*See COLONIAL LAW.* 12.

**INJUNCTION.**

*See PRACTICE—INJUNCTION.*

— Breach of covenant—Acquiescence—Damages.  
*See COVENANT.* 1.

— Fouling stream—*Quia timet* action.  
*See NUISANCE.* 2.

— Infringement of patent.  
*See PATENT.* 2.

— Interference with railway siding.  
*See RAILWAY COMPANY.* 12.

— Interlocutory—Combination to effect unlawful object.  
*See CONSPIRACY.*

— Interlocutory — Newspaper — Property in title.  
*See NEWSPAPER.*

— Mandatory—Public Health Acts—Nuisance—Compensation.  
*See PUBLIC HEALTH ACTS.* 9.

— Nuisance—Pollution of well—Underground water.  
*See WATER.* 4.

— Nuisance by rural authority—Dissolution of rural authority.  
*See LOCAL GOVERNMENT.* 2.

— Obstruction of light.  
*See LIGHT.* 3—5.

— Partnership action—Contract—Evidence of partnership.  
*See PARTNERSHIP.* 2.

— Publication of letters.  
*See LETTERS.*

— Telegraphic address—Jurisdiction.  
*See TRADE NAME.* 1.

— To restrain publication of proceedings in Court of justice.  
*See DEFAMATION.* 1.

— To restrain building—Sale of superfluous lands.  
*See LANDS CLAUSES ACT.* 13.

— To restrain Scotch actions against company in liquidation.  
*See COMPANY—VOLUNTARY WINDING-UP.* 6.

— To restrain use of steam-roller so as to damage gas pipes under road.  
*See HIGHWAY.* 10.

**INJUNCTION—continued.**

— Water-rate—Dispute as to annual value—Jurisdiction.

See WATERWORKS CLAUSES ACT. 3.

**INLAND REVENUE.**

See REVENUE.

**INN—Licence—Division of County for granting Licences—Island in Bristol Channel—Jurisdiction.** H. had a house on an island in the Bristol Channel, and had for thirty-eight years, without having a justices' or excise licence, sold intoxicating liquors to all visitors there, no other house being on the island. He was summoned for selling without a licence:—*Held*, by Mathew and Smith, JJ., that the island was part of the county to which it was nearest, and that the licensing justices of any division of the county had jurisdiction to grant the ordinary licences to sell intoxicating liquors there. **WRIGHT v. HARRIS** - - 49 J. P. 628

2. — **Licence—Renewal—General Annual Licensing Meeting—Proceedings where no Notice of Opposition—Objection not made in open Court—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 42.** By sect. 42 of the Licensing Act, 1872, justices at the general annual licensing meeting shall not entertain any objection to the renewal of a licence, or take any evidence with respect to the renewal thereof, unless written notice of an intention to oppose the renewal has been served upon the holder of the licence in the prescribed manner: "Provided that the justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any licence to a future day, and require the attendance of the holder of the licence on such day, when the case will be heard and the objection considered, as if the notice hereinbefore prescribed had been given." —*Held*, that an objection to the renewal of a licence made privately to justices before they came into court at the general annual licensing meeting was not a good "objection made" within the meaning of the proviso to sect. 42, and that, therefore, the justices had no power to adjourn the case. **REG. v. MERTHYR TYDVIL JJ.** **REG. v. BISHOP** [14 Q. B. D. 584, 54 L. J. M. C. 78, 49 J. P. 213]

3. — **Licence—Renewal of in-door Beer Licence—Objections—Valuation of House—Jurisdiction as to renewal Licence.** Where an in-door beer licence which had been renewed since 1869 was refused to be renewed by the licensing justices, on the ground that though the house was of sufficient annual value when the application was heard at the adjourned annual meeting, yet it had not been so on the 25th Aug., the date of the original general annual meeting, the value having been increased during the interval:—*Held*, by Grove, Hawkins, and Smith, JJ., that the justices had exceeded their jurisdiction, and a rule for *mandamus* was made absolute. **REG. v. MONTAGU** [49 J. P. 55]

**INNKEEPER—Liability—Relation of innkeeper and guest, what constitutes.** **HANCOCK v. RAND** [46 Amer. B. 112 (U.S.)]

2. — **Liability for loss of guest's property—Contributory negligence—Neglect of guest to bolt door of his room.** **MURCHISON v. SERGENT** [47 Amer. B. 754 (U.S.)]

**INQUEST—Destruction of body to prevent—Coroner's jurisdiction.**  
See CRIMINAL LAW. 2.

**INQUIRIES.**

See PRACTICE—ACCOUNTS.

— Administration action—Application of income of unauthorised investment.  
See EXECUTOR—ACTIONS. 8.

**INQUISITION—Lunacy.**

See LUNATIC. 3, 4.

**INSANITY.**

See LUNATIC.

**INSPECTION—Documents.**

See PRACTICE—DISCOVERY—DOCUMENTS.

— Trinity Masters—Application before hearing.  
See PRACTICE—ADMIRALTY. 8.

**INSTRUMENT—Order to execute—Non-compliance with.**

See PRACTICE—JUDGMENT. 6.

**INSURANCE, FIRE—Loss caused by act of insured himself whilst insane—Policy held enforceable.** **KAROW v. CONTINENTAL INSURANCE CO.** [46 Amer. B. 17 (U.S.)]

— Policy—Assignment—Void against creditors.

See FRAUDULENT CONVEYANCE. 2.

**INSURANCE, LIFE—Contract conditioned to be subject to any by-laws thereafter to be enacted.** **SUPREME COMMANDERY, &c., v. AINSWORTH.** [46 Amer. B. 332 (U.S.)]

2. — **Insurable Interest—A son-in-law has no insurable interest in the life of his mother-in-law.** **ROMBACH v. PIEDMONT INSURANCE CO.** [48 Amer. B. 239 (U.S.)]

— Bankruptcy—Examination of debtor to enable insurance to be effected on his life.  
See BANKRUPTCY—EXAMINATION. 1.

— Company—Income Tax—"Annual profits or gains."

See REVENUE. 3.

— Policy—Bequest—Right to bonus.

See WILL—CONSTRUCTION. 33.

— Policy—Bonuses—How applied.

See SETTLEMENT—CONSTRUCTION. 1.

**INSURANCE, MARINE—General Average—Expenses of reshipping Cargo and of Ship leaving Port of Refuge.** A ship on a voyage having sprung a dangerous leak, the captain, acting justifiably for the safety of the whole adventure, put into a port of refuge to repair. In port the cargo was reasonably, and with a view to the common safety of ship, cargo and freight, landed in order to repair the ship. The ship was repaired, the cargo reloaded and the voyage completed:—

*Held*, affirming the decision of the Court of Appeal (13 Q. B. D. 69, 53 L. J. Q. B. 385, 50 L. T. 799, 5 Asp. M. C. 232, 1884 Dig., col. 219), that the cargo owners were not chargeable with a general average contribution in respect of the expenses of reshipping the cargo.

**Atwood v. Sellar** (5 Q. B. D. 286, 49 L. J. Q. B. 515, 42 L. T. 644, 28 W. R. 604) discussed. **SVENDSEN v. WALLACE** - 10 App. Cas. 404, [54 L. J. Q. B. 497, 52 L. T. 901 (H. L., E.)]

2. — **Insurable Interest in Goods at Purchaser's Risk—Sale of Goods "f.o.b."** D. sold to H

**INSURANCE, MARINE—continued.**

B. 200 tons of German sugar "f.o.b. Hamburg; payment by cash in London in exchange for bill of lading:" the price to be variable according to the percentage of saccharine matter which was not to exceed or fall short of certain limits. B. resold to the Respondent the same quantity at an increased price, but otherwise upon similar terms. D. also sold to the Respondent 200 tons upon similar terms. To fulfil these contracts 390 tons (being ten tons short) were shipped in bags on one vessel at Hamburg for Bristol, no bags being set apart for one contract more than the other. Each bag was marked with its percentage of saccharine matter, and bills of lading with marks corresponding with the bags were sent to D. to be retained till payment in accordance with the contracts. The Respondent was insured in floating policies upon "any kind of goods and merchandises" between Hamburg and Bristol, and duly declared in respect of this cargo. The ship sailed from Hamburg for Bristol and was lost. After receiving news of the loss D. allocated 2000 bags or 200 tons to B.'s contract, and 1900 bags or 190 tons to the other contract. In an action upon the policies:—

*Held*, affirming the decision of the Court of Appeal (12 Q. B. D. 564, 53 L. J. Q. B. 356, 51 L. T. 449, 5 Asp. M. C. 294, 1884 Dig., col. 220), that the sales being "f.o.b. Hamburg" the sugar was at the Respondent's risk after shipment; that he had an insurable interest in it; and that the underwriters were liable. *INGLIS v. STROCK* - 10 App. Cas. 263, 55 L. J. Q. B. 582, [52 L. T. 821, 33 W. R. 877 (H.L., E.)]

3. — *Insurable Interest—Mortgagees—Insurance against absolute Total Loss—Constructive Total Loss becoming absolute.* The mortgagees of a ship agreed with the mortgagors to effect an insurance on the ship at the mortgagors' expense, the policy to be held by them as a part of the security. After the ship had sailed, the mortgagees effected an insurance against absolute total loss only. On the voyage the ship was driven ashore in a gale, and having become a constructive total loss, notice of abandonment was given by the mortgagees to the underwriters. The mortgagors immediately gave notice that they would look to the mortgagees as if they were their underwriters for a full insurance, and recovered from them the full value of the ship. The ship remained for two months exposed to the perils of the sea, when she became a complete wreck, and was then sold without prejudice to the rights of the parties. After the sale, but before this action, the mortgage was paid off.

*Held*, by Mathew, J., in an action by the mortgagees against the underwriters claiming for an absolute total loss; (1), that the mortgagees, though their mortgage had been paid off, had an insurable interest in the ship, the mortgagors having ceded to them their rights under the policy when they were paid the full value of the ship; and, (2), that as the ship when sold had become an absolute total loss from perils which were continuous, the plaintiffs were entitled to recover. *LEVY & Co. v. MERCHANTS MARINE INSURANCE CO.* - 52 L. T. 263.

4. — *Misrepresentation — Concealment of Material Fact — Craft Risk — Arrangement by*

**INSURANCE, MARINE—continued.**

*Assured to employ a particular Lighterman.* On policies of marine insurance on goods, which included risks on crafts and lighters, underwriters to the knowledge of the Plaintiffs charged a higher rate of premium where the insurance was with no recourse against lightermen (which meant where the lighterage was done on the terms that the liability of the lightermen was to be less than that of common carriers, namely, for negligence only), than they charged where there was such recourse and the liability of the lightermen was to be that of common carriers. The Plaintiffs effected with the Defendant, a Lloyd's underwriter, a policy of marine insurance on goods which included risk on craft and lighters, and was not with no recourse against lightermen. At the time of effecting such policy the Plaintiffs had an arrangement with one H., by which he was to do all the Plaintiffs' lighterage on the terms that he was only to be liable for negligence:—*Held*, that if the Plaintiffs intended that the goods so insured should be landed under such arrangement with H., it was a fact which a prudent and experienced underwriter would take into consideration in estimating the premium, and that therefore a jury would be justified in finding that the non-communication of it to the Defendant was the concealment of a material fact which vitiated the policy. A mere disclosure of the existence of such arrangement to the Defendant's solicitor is not notice of it to the Defendant. *TATE & SONS v. HYSLOP* - 15 Q. B. D. 368, [54 L. J. Q. B. 592, 53 L. T. 581 (C.A.)]

5. — *Mutual Insurance—No stamped Policies—Estoppel*—30 Vict. c. 23, ss. 7, 9—39 Vict. c. 6, s. 2.] Where a member of a mutual ship insurance company, afterwards converted into a limited company, has vessels on its books as insured, and pays calls, and otherwise acts as if he were a member of the company, he is, in any action brought against him by the united company for calls on losses, estopped from denying his liability and from setting up either any irregularity in the transfer from the one company to the other, or that the losses were paid without any stamped policies being entered into, in contravention of 30 Vict. c. 23, s. 7.

The decision of Mathew and Day, JJ. (52 L. T. 898), affirmed. *BARROW MUTUAL SHIP INSURANCE CO. v. ASHBURNER* - 54 L. J. Q. B. 377 (C.A.)

6. — *Policy—Deviation from course indicated in—Forfeiture.* *SNYDER v. ATLANTIC INSURANCE CO.* - 47 Amer. R. 29 (U.S.)

7. — *Time Policy—Memorandum against Average under 3 per cent.—Adding distinct successive Losses together.* In a time policy of marine insurance the ship was warranted free from average under 3 per cent. unless general, or the ship be stranded, sunk or burnt:—*Held*, by Stephen, J., following *Blackett v. Royal Exchange Assurance Co.* (2 C. & J. 244, 1 L. J. Ex. 101), that distinct successive losses on the ship during the period insured, each less than 3 per cent., but in the aggregate amounting to more than 3 per cent., were not within the exception and were to be borne by the underwriters. *STEWART & Co. v. MERCHANTS MARINE INSURANCE CO.*

[14 Q. B. D. 555, 54 L. J. Q. B. 387  
[Reversed by C. A., W. N. (1885) 211]



**INSURANCE, MARINE—continued.**

8. — *Time Policy—Insurance of Chartered Freight—Duration of Risk.*] A charterparty provided that in the event of certain specified accidents, and the ship becoming incapable of proceeding, payment of hire should cease until she was capable of resuming her voyage. An insurance on chartered freight was effected, whereby the insurers undertook to pay loss of hire which might arise on the clause of the charterparty for accidents occurring during a certain period, which included the period for which the vessel was chartered. An accident did happen during this period, but it was not discovered, nor was any loss of hire incurred, until after the expiration of such period. *Held*, by Grove, Manisty, and Lopes, J.J., that the underwriter was not liable for such loss of hire. *HOUGH & CO. v. HEAD* [54 L. J. Q. B. 294, 52 L. T. 861, 33 W. R. 458 (Affirmed by C. A., 55 L. J. Q. B. 43, 34 W. R. 160)]

9. — *Total Loss, Constructive—Re-insurance—Notice of Abandonment—Suing and Labouring Clause.*] Upon a constructive total loss happening to the ship insured, notice of abandonment need not be given to the underwriters of a policy of re-insurance. The owners of a ship insured her for twelve months in an ordinary Lloyd's policy, which contained a suing and labouring clause. The underwriters of the Lloyd's policy re-insured themselves with a French company which re-insured itself with the Defendants. The policy underwritten for the French company by the Defendants was for £1000, bound them to pay as might be paid on the original policy, was to cover the risk of total loss only, and contained a suing and labouring clause. Whilst the policy was in force, the ship went ashore and was much damaged. Her owners gave notice of abandonment to the underwriters of the Lloyd's policy, but notice of abandonment was not given to the Defendants; the underwriters of the ship ultimately settled with her owners at 88 per cent. They expended more than £5000 in floating the ship, and sold her to a builder, who repaired her at a cost of £9000, and resold her for £11,200. The cost of floating the ship (after deducting the price paid by the shipbuilders) being added to the 88 per cent. represented a loss of 112 per cent. In an action by the French company as re-insurers against the Defendants:—*Held*, that a constructive total loss had occurred, and that as the Defendants had bound themselves to pay as might be paid on the original policy, they were liable to the extent of £1000; but that they could not be held liable for more, as the underwriters of the Lloyd's policy were not the "factors, servants, or assigns" of the Plaintiffs within the meaning of the suing and labouring clause, and that the Defendants were not liable, at least by virtue of that clause, for any part of the expenses incurred in floating the ship. *UZIELLI v. BOSTON MARINE INSURANCE COMPANY* - - - 15 Q. B. D. 11, [54 L. J. Q. B. 142, 52 L. T. 787, 33 W. R. 293 (C.A.)]

**INSURANCE**—Railway passengers' assurance — Reference—Staying proceedings.

See PRACTICE—STAYING PROCEEDINGS. 5.

**INTEREST**—Costs—*R. S. C.*, 1883, *App. H.*, *Forms* 1, 3.] *Held*, by Chitty, J., that where

**INTEREST—continued.**

costs are given by a judgment and taxed, interest on such costs runs from the date of the judgment, and not from the date of the taxing master's certificate.

*Landowners' W. of England Co. v. Ashford* (33 W. R. 41) followed. *Re LONDON WHARFING (or WHARFAGE, or WHARF) AND WAREHOUSING Co.* - - - 54 L. J. Ch. 1137, 53 L. T. 112, [33 W. R. 836, W. N. (1885) 163]

2. — *Executor—Payments for benefit of Infant.*] Interest will not be allowed on voluntary payments made by an executor for the benefit of an infant who is entitled to the income of a fund, which has been paid into Court, until 21, and to the corpus after that age. *Re KING* [W. N. (1885) 175]

— Bill of sale—Lump sum.

See BILL OF SALE—FORMALITIES. 3.

— Compensation under Artizans' Dwellings Act.

See ARTIZANS' DWELLINGS ACT.

— Executor—Advances by.

See EXECUTOR—ADMINISTRATION. 5.

— Foreclosure action—Form of order.

See MORTGAGE—FORECLOSURE. 7.

— Lands Clauses Act—Purchase-money—Land subject to mortgage.

See LANDS CLAUSES ACT. 8.

— Legacy—Delay in realizing estate.

See LIMITATIONS, STATUTES OF. 4.

— Mortgage debt—Insufficient security—Apportionment.

See APPORTIONMENT.

— Mortgage debt—Limitation.

See LIMITATIONS, STATUTES OF. 9, 10.

— Railway company—Abandonment—Money raised on personal security.

See RAILWAY COMPANY. 2.

— Redemption—Interest in lieu of notice.

See MORTGAGE—REDEMPTION.

— Sale of realty.

See VENDOR AND PURCHASER—INTEREST—VENDOR AND PURCHASER—RESCISSION. 1.

**INTERPLEADER**—*Indemnity to Stakeholder—Objection by Claimant indemnifying to Interpleader Issue*—*O. LVI.*, r. 2 (6)]. The objection that a stakeholder has, by merely taking an indemnity from one of two rival claimants to property in his hands, disentitled himself to relief under the Interpleader Acts because he has identified himself with and must be taken to "collude" with the claimant who gave the indemnity, cannot be raised by that claimant himself, and the decisions in *Tucker v. Morris* (1 Cr. & M. 73) and *Belcher v. Smith* (9 Bing. 82) do not apply. *Re THOMPSON & WRIGHT* - 13 Q. B. D. [633, 54 L. J. Q. B. 32, 51 L. T. 634, 33 W. R. 96]

— Practice.

See PRACTICE—INTERPLEADER.

— Sheriff—Proceeds of goods taken in execution—Money paid to sheriff under protest.

See SHERIFF. 3.

**INTERROGATORIES.**

See PRACTICE—DISCOVERY—INTERROGATORIES.

**INTERVENTION**—Divorce—"Material facts not brought before the Court."  
See PRACTICE—DIVORCE. 7.

**INVESTMENT**—Bequest of shares—State of investment—Altered conditions.  
See WILL—CONSTRUCTION. 18.

— Money in Court subject to settlement by statute.

See SETTLED LAND ACTS. 7.

— Of personalty to cultivate real estate.  
See SETTLEMENT—INVESTMENTS.

— Purchase-money of lands taken under Lands Clauses Act—Practice.  
See LANDS CLAUSES ACT. 10.

— Trustee—Loss—Liability for.  
See TRUSTEE—LIABILITIES. 4—8.

— Trustee's discretion as to.  
See TRUSTEE—POWERS. 1.

— Unauthorised—Married woman.  
See HUSBAND AND WIFE—WIFE'S PROPERTY. 3.

**IRELAND**—Tithe-rent charge—Limitation.  
See LIMITATIONS, STATUTES OF. 13.

**IRISH LAND LAW ACT**—*Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), s. 58, sub-s. 3*—*Landlord and Tenant—Pasture—Land let to be used wholly or mainly for Pasture.*] By a lease in 1861 lands in Ireland of more than 100 acres were demised for twenty-one years, the tenant covenanting that he would not without the landlord's consent break up or have in tillage in any one year any greater quantity than ten acres, out of a certain specified portion, and that he would manage the land in a good and husbandlike manner and in due and regular course so that the same might not be in any way injured.

At the time of the demise there were only fifteen acres in tillage, and the rest was used as pasture, but was not ancient pasture, the whole farm having been put in tillage (in different portions at different times) between 1852 and 1861. The tenant used the farm as a dairy farm; frequently meadowing different portions (about twenty acres each year), and sometimes selling hay off the land:—

*Held*, affirming the decision of the Court of Appeal (Ireland), that the farm was not a "holding let to be used wholly or mainly for the purpose of pasture" within the Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), s. 58, sub-s. (3).  
WESTROPP v. ELLIGOTT - 9 App. Cas. 815,  
[52 L. T. 147, 14 L. R. Ir. 319 (H. L., Ir.)]

**ISLAND**—Inn on—Jurisdiction of licensing justices.  
See INN. 1.

**ISSUE**—Meaning of, in will.  
See WILL—CONSTRUCTION. 19.  
WILL—ESTATE IN REALTY. 4.

**J.**

**JERSEY**—Law of—Set off—Liquid demand.  
See COLONIAL LAW. 8.

**JOINDER**—Causes of action.  
See PRACTICE—JOINDER OF ACTIONS.  
— Parties—Husband and wife.  
See PRACTICE—PARTIES. 7.

**JOINT TENANT**—*Infant—Severance.*] A marriage settlement contained a proviso for the settlement of the present and after-acquired property of the intended wife, who was an infant. She was then entitled in remainder jointly with two others to a share in Bank annuities standing in the names of trustees:—

*Held*, by Pearson, J., that the joint tenancy was severed. BURNABY v. EQUITABLE REVERSIONARY INTEREST SOCIETY - 28 Ch. D. 416, 54 L. J. Ch. [466, 52 L. T. 350, 33 W. R. 639]  
See also WILL—CONSTRUCTION. 20.

**JUDGMENT**—Registration—Omission to register within Five Years—Priorities—1 & 2 Vict. c. 110, s. 19—2 & 3 Vict. c. 11 s. 4—3 & 4 Vict. c. 82, s. 2.] A., B., and C. were judgment creditors of D. A. registered his judgment on the 12th of March, 1840, but never re-registered; B. registered his judgment in April, 1842, and re-registered in March, 1848; C. registered his judgment on the 18th of March, 1845, and re-registered on the 16th of March, 1850. Questions having arisen as to the priorities of the several judgment creditors, the fund in Court being insufficient for payment in full:—

*Held*, by Chitty, J., that on the construction of the statutes 1 & 2 Vict. c. 110, s. 19, 2 & 3 Vict. c. 11, s. 4, and 3 & 4 Vict. c. 82, s. 2, and upon the principle laid down in *Beavan v. Earl of Oxford* (6 D. M. & G. 492), C. was first entitled to take out of the fund the sum found due on A.'s judgment, and then that B. was entitled to be paid the full amount of his judgment before C. took anything more in respect of his judgment.  
*Re* LORD KENSINGTON. BACON v. FORD 29 Ch. D. [527, 54 L. J. Ch. 1085, 53 L. T. 19, 33 W. R. 689]

2. — *Res judicata*—Cause of Action—Separate Actions in respect of same wrongful Act—Damage to Property and Injury to Person—Damages recoverable in previous Action—*Maxim: "Nemo debet bis vexari pro una et eadem causa"*—*Maxim, "Interest reipublicæ ut sit finis litium."*] Damage to goods and injury to the person, although they have been occasioned by one and the same wrongful act, are infringements of different rights, and give rise to distinct causes of action; and therefore the recovery in an action of compensation for the damage to the goods is no bar to an action subsequently commenced for the injury to the person.—So *held* by Brett, M.R., and Bowen, L.J., Lord Coleridge, C.J., dissenting.—The Plaintiff brought an action in a county court for damage to his cab occasioned by the negligence of the Defendant's servant, and, having recovered the amount claimed, afterwards brought an action in the High Court of Justice against the Defendant, claiming damages for personal

**JUDGMENT—continued.**

injury sustained by the Plaintiff through the same negligence:—*Held*, by Brett, M.R., and Bowen, L.J., Lord Coleridge, C.J., dissenting, that the action in the High Court was maintainable, and was not barred by the previous proceedings in the county court.—Judgment of the Queen's Bench Division (11 Q. B. D. 712, 52 L. J. Q. B. 756, 1883 Dig. Col. 144) reversed. *BRUNSDEN v. HUMPHREY* - 14 Q. B. D. 141, [53 L. J. Q. B. 476, 51 L. T. 529, 32 W. R. 944, 49 J. P. 4 (C.A.)]

3. — *Splitting cause of action—Negligence in carriage of goods—Separate actions for injuries to several portions of same consignment—Liability to vendee of part.* In September, 1883, the Plaintiffs (a firm of millers) delivered to the Defendant Railway Company a quantity of flour to be carried on the railway, nine sacks being consigned to D. (a baker), who had purchased the same from the Plaintiffs, and the remainder being consigned to the Plaintiffs themselves. Some of the flour, comprising one of the sacks received by the Plaintiffs, and the greater portion of that delivered to D., was damaged in the carriage by coming in contact with paraffin oil. D. had used up in his trade two and a half sacks of the injured flour before he discovered that it was contaminated, and therefore he returned five sacks, 10st. 12lbs., to the Plaintiffs, and claimed from them a sum of £40 13s. 2d. as damages for the two and a half sacks which he had used. The Plaintiffs notified to the Defendants the damage sustained, and issued a civil-bill process to recover damages for the injury to six sacks, 10st. 12lbs., of the flour, but not claiming in respect of the two and a half sacks used up by D., and they obtained a civil-bill decree on that process against the Defendants on the 31st October, 1883. D., on the 17th December, 1883, issued a civil-bill against the Plaintiffs for the damage to the two and a half sacks, and obtained a decree against them on the 19th April, 1884, which was affirmed on appeal and the amount was paid by the Plaintiffs to D. The Defendant Railway Company were served by the present Plaintiffs with notice of D.'s civil-bill and the appeal from the decree, and invited to attend on the hearing. The Plaintiffs afterwards sued the Defendant Railway Company by civil-bill to recover the amount which they had been obliged to pay to D. for damages and costs under the decree of the 19th April, 1884:—

*Held*, that the injury to the two and a half sacks being an integral part of the cause of action arising from the Defendants' negligence in the carriage of flour, and for which the Plaintiffs sued in the first civil-bill process, the second civil-bill action was not maintainable. *RUSSELL v. WATERFORD, &C., Ry. Co.* - 16 L. B. R. 314

— Estoppel by.

See ESTOPPEL.

— Evidence of —Affidavit verifying shorthand note.

See EVIDENCE. 13.

— "Final judgment"—Bankruptcy notice.

See BANKRUPTCY—ACT OF BANKRUPTCY. 1.

**JUDGMENT—continued.**

— Foreclosure action.

See MORTGAGE—FORECLOSURE. 7—9.

— Foreign—Estoppel.

See FOREIGN JUDGMENT.

— Partnership action.

See PARTNERSHIP. 3—5.

— Practice.

See PRACTICE—JUDGMENT.

— Proof of.

See EVIDENCE. 8.

— Registration — Bond to secure mortgage, debt.

See MORTGAGE—PRIORITY. 2.

**JUDGMENT DEBT**—Bankruptcy petition founded on—Power of Court to inquire into consideration.

See BANKRUPTCY—RECEIVING ORDER. 3.

— Proof of, in bankruptcy.

See BANKRUPTCY—PROOF. 5, 6.

**JUDGMENT DEBTOR** — Arrest of — Privilege from.

See BANKRUPTCY—PROTECTION.

**JUDGMENT SUMMONS**—Debtors Act.

See ARREST. 1, 2.

**JUDICIAL SEPARATION**—Justices' jurisdiction —Aggravated assault.

See JUSTICES. 3.

**JURISDICTION**—*Admiralty Division—Action in rem—Action under Lord Campbell's Act—9 & 10 Vict. c. 93—Admiralty Court Act, 1861 (24 Vict. c. 10), ss. 7, 35.]* The Admiralty Court Act, 1861 (24 Vict. c. 10) which by sect. 7 gave the Court of Admiralty "jurisdiction over any claim for damage done by any ship," did not give jurisdiction over claims for damages for loss of life under Lord Campbell's Act (9 & 10 Vict. c. 93); and the Admiralty Division cannot entertain an action in rem for damages for loss of life under Lord Campbell's Act:—

So *held* affirming the decision of the Court of Appeal (9 P. D. 96, 53 L. J. P. 33, 51 L. T. 104, 32 W. R. 783, 5 Asp. M. C. 270, 1884 Dig. Col. 228).

*The Franconia* (2 P. D. 163, 46 L. J. P. 33, 36 L. T. 640, 25 W. R. 796) overruled. *THE "VERA CRUZ."* *SEWARD v. "VERA CRUZ"* 10 App. Cas.

[59, 54 L. J. P. 9, 52 L. T. 474, 33 W. R. 477, [49 J. P. 324, 5 Asp. M. C. 386 (H. L., E.)]

— Admiralty—Co-ownership action—Ship registered in Guernsey.

See PRACTICE—ADMIRALTY. 10.

— Bankruptcy.

See BANKRUPTCY—JURISDICTION.

— County Court.

See COUNTY COURT. 2—4.

— Court of Appeal—Striking solicitor off the roll.

See SOLICITOR—STRIKING OFF ROLL.

— Disentailing deed—Rectification.

See TENANT IN TAIL. 2.

— Guardian, appointment of — Infant born abroad.

See INFANT. 2.

**JURISDICTION—continued.**

- High Court—Offence on high seas.  
See CRIMINAL LAW. 16.
- Inferior Court—Prohibition—Want of jurisdiction.  
See PROHIBITION.
- Justices.  
See JUSTICES.
- Lunatic—Property of.  
See LUNATIC. 6, 7.
- Mayor's Court—Prohibition.  
See MAYOR'S COURT.
- National Debt Act—Petition for re-transfer of stock—*Res judicata*.  
See NATIONAL DEBT COMMISSIONERS. 1.
- Practice.  
See PRACTICE—JURISDICTION.
- Receiver—Service of notice of appointment of, out of jurisdiction.  
See PRACTICE—RECEIVER. 5.
- Salford Court—Prohibition.  
See SALFORD COURT.
- Telegraphic address—Injunction.  
See TRADE-NAME. 1.
- Waterworks Clauses Act—Injunction.  
See WATERWORKS CLAUSES ACT. 3.
- Winding-up of foreign company.  
See COMPANY—WINDING-UP. 10.
- JURY**—Judgment contrary to findings of—New trial.  
See PRACTICE—NEW TRIAL. 2.
- Province of—Negligence—Contributory—Evidence.  
See NEGLIGENCE. 2.
- Right to.  
See PRACTICE—TRIAL. 1—4.

**JUSTICES (OF THE PEACE)—Case stated—Power to state case—Summary Jurisdiction Act (42 & 43 Vict. c. 49), s. 33—Order, Determination, or other Proceeding of a Court of Summary Jurisdiction—General District Rate, Order for Payment of—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 256.]** A special case may be stated by justices under the 33rd section of the Summary Jurisdiction Act, 1879, upon an application to enforce payment of a general district rate under the 256th section of the Public Health Act, 1875.—On an application under the last-mentioned section to enforce a general district rate good on the face of it, the justices may not refuse to make an order for payment of the rate on the ground that there is a concurrent rate made for the same purpose. *SANDGATE LOCAL BOARD v. PLEDGE*

[14 Q. B. D. 730, 52 L. T. 546, 33 W. R. 585, 49 J. P. 342]

2. — *Case stated—Costs.* The costs of the successful Appellant will be allowed by the High Court, though the Respondent does not appear. *GREENBANK v. SANDERSON* - - - 49 J. P. 40  
*SHEPHERD v. FOLLAND* - - - 49 J. P. 165

3. — *Jurisdiction—Judicial Separation—Aggravated Assault—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 4—24 & 25 Vict.*

**JUSTICES (OF THE PEACE)—continued.**

c. 100, s. 43.] If a husband has been convicted of an aggravated assault the magistrates may grant a judicial separation, even though they do not fine or imprison him. *WOODS v. WOODS*  
[10 P. D. 172, 33 W. R. 323]

4. — *Mandamus to, to hear application for renewal of licence—Evidence of pretended Rehearing—New Trial.* Licensing justices were ordered by *mandamus* to hear an application to renew a beerhouse licence, and made a return that they duly heard and determined it. The prosecutor pleaded to the return by traversing it, and after issue, a jury found that it was a mere pretended rehearing, and gave a verdict for the prosecutor. The justices had decided the case on the question whether the applicant was the real resident occupier, and the jury acted chiefly on evidence that one of the justices was overheard to say he would hear but would decide against the applicant:—

*Held*, by Field and Manisty, JJ., that there was no evidence to justify the finding of the jury that the justices did not hear and determine the case, and verdict set aside accordingly and judgment entered for the justices. *REG. v. PYREHILL LICENSING JJ.* - - - 49 J. P. 453

5. — *Practice—Rule against Justices—Refusal to hear Case—Mandamus—11 & 12 Vict. c. 44, s. 5.]* *Held*, by Coleridge, C.J., Williams and Cave, JJ., that under the above section a rule *nisi* or a *mandamus* can be properly applied for against justices for refusing to hear a case although the matter be other than one in which they need protection in the performance of their duties. *Reg. v. Percy* (L. R. 9 Q. B. 64, 22 W. R. 72) overruled. *REG. v. PHILLIMORE (or PILLING)*  
[14 Q. B. D. 474, n., 51 L. T. 205, 32 W. R. 593, 48 J. P. 774]

6. — *Practice—Rule against Justices—Refusal to do Act relating to the Duties of Office—11 & 12 Vict. c. 44, s. 5—Mandamus.* The application of the 5th section of 11 & 12 Vict. c. 44, is not confined to cases where the justice requires protection in respect of the act he is called upon to do.—*Reg. v. Percy* (L. R. 9 Q. B. 64, 22 W. R. 72) not followed. *REG. v. BIRON* 14 Q. B. D. 474, [54 L. J. M. C. 77, 51 L. T. 429, 49 J. P. 68]

7. — *Practice—Rule for Mandamus—Information before Magistrate—Refusal by Magistrate to issue Summons for Perjury or take Prosecutor's Recognizances—Vexatious Indictments Act (22 & 23 Vict. c. 17), s. 2.]* A *mandamus* will not be granted to interfere with the discretion of a magistrate who has refused to issue a summons for perjury on an information setting forth facts upon which no jury would convict.

The provisions of the above section, requiring a magistrate to bind over the prosecutor to prosecute, only apply where a charge or complaint has been made and the person charged has been before the magistrate.

So *held*, by Coleridge, C.J., and Grove, J. *Ex parte REID* - - - 49 J. P. 600

— Highway rate—Signature and allowance of justices.

See HIGHWAY. 7.

**JUSTICES (OF THE PEACE)—continued.**

- Jurisdiction—Bastardy proceedings.  
See BASTARDY.
- Jurisdiction—Claim of right—Assault.  
See MANDAMUS. 2.
- Jurisdiction—Inn—Licence.  
See INN.
- Jurisdiction—Lunatic, alleged—Examination of.  
See LUNATIC. 1.
- Lands Clauses Act—Settlement of amount of compensation—Limitation.  
See LANDS CLAUSES ACT. 3.
- Practice—Rule against justices—Court fees.  
See PRACTICE—COSTS. 6.

**L.****LANCASTER, DUCHY OF.**

See DUCHY OF LANCASTER.

**LAND**—Interest in—Mortmain—Gift to charity.  
See CHARITY. 6—11.

— Recovery of—Claim for—Joinder.  
See PRACTICE—JOINDER OF ACTIONS.

— Sale of.  
See VENDOR AND PURCHASER.

**LAND LAW (IRELAND) ACT**—Pasture.  
See IRISH LAND LAW ACT.

**LANDLORD AND TENANT :—**

- I. AGREEMENT.
- II. DISTRESS.
- III. HOLDING OVER.
- IV. IMPROVEMENTS.
- V. LEASE.
- VI. LIABILITIES.
- VII. MONTHLY TENANCY.
- VIII. RE-ENTRY.
- IX. RENT.
- X. YEARLY TENANCY.

**I. LANDLORD AND TENANT—AGREEMENT—**

*Specific Performance—Commencement of Term—Statute of Frauds.*] Where an agreement in writing for a lease for a term of years did not expressly state the date at which the term was to commence, but contained a reference to circumstances from which such date could be clearly ascertained :—

*Held*, sufficient to satisfy the Statute of Frauds, and specific performance of the agreement decreed.  
**PHILAN v. TEDCASTLE** - 15 L. R. Ir. 169 (C.A.)

2. — *Specific Performance—Rescission—Damages—Form of Order—Costs.*] After a judgment for specific performance of an agreement to grant a lease which the party against whom the judgment has been given is unable or neglects to carry into effect, the party in whose favour the judgment was given is entitled to an order for rescission of the contract, retaining the benefit of any direction as to costs of the action, but not to damages or to occupation rent. He is also en-

**I. LANDLORD AND TENANT—AGREEMENT—continued.**

titled to the costs of obtaining the order for rescission. So *held*, by North, J.

*Henty v. Schröder* (12 Ch. D. 666, 48 L. J. Ch. 792, 27 W. R. 833); *Foligno v. Martin* (16 Beav. 586, 22 L. J. Ch. 502), and *Watson v. Cox* (L. R. 15 Eq. 219, 42 L. J. Ch. 279, 21 W. R. 310) explained and followed.

*Sweet v. Meredith* (4 Giff. 207, 22 L. J. Ch. 147, 7 L. T. 664) not followed. **HUTCHINGS v. HUMPHREYS (or HUMPHREY)** - 54 L. J. Ch. 650, [52 L. T. 690, 33 W. R. 563, W. N. (1885) 79]

3. — *Specific Performance—Statute of Frauds—Approval of draft by solicitors for intended lessor—Letter referring to draft.*] The Defendant entered into a verbal agreement with the Plaintiff to grant him the lease of a house for a term of years. A draft of the proposed lease was furnished by the Plaintiff's solicitor to the Defendant's solicitors, and returned by them approved of on behalf of the Defendant. The Defendant subsequently wrote a letter to the Plaintiff complaining that the lease had not been engrossed. Upon the Defendant declining to carry out the agreement the Plaintiff applied for a decree for specific performance :—

*Held*, affirming the decree of the County Court Judge, that the letter contained a sufficient reference to the draft of the lease to admit parol evidence to shew that there was such a draft, and thus to connect the draft with the letter signed by the Defendant; and that those papers so connected constituted a sufficient writing to satisfy the requirements of the Statute of Frauds. **CRAIG v. ELLIOTT** - 15 L. R. Ir. 257

4. — *Underlease—Agreement that Underlease shall contain the same Covenants as original Lease—Covenant against Assignment.*] The Plaintiff, who was lessee of part of the property of a hospital, agreed with the Defendant to grant him an underlease, "to contain all usual covenants (including a covenant not to assign or underlet without the consent of the Plaintiff, such consent not to be withheld if the proposed assignee or tenant be respectable and responsible), together with such other covenants, clauses, and provisos as are contained in the lease under which the premises are held." The original lease contained (1) a covenant that if any dispute relating to the demised premises should arise between the lessee and any other tenant of the hospital, it should be referred to the arbitration of the hospital; (2) that the lessee, his executors, administrators, or assigns would not assign or sublet without the licence of the hospital; (3) that all demises and assignments of the demised premises should be prepared by the solicitors of the hospital :—

*Held*, by Pearson, J., and by the Court of Appeal, that the covenants in the original lease were not to be taken as models and inserted in the underlease with the names of the underlessor and underlessee substituted for the names of the original lessors and lessee respectively, but that the Plaintiff was entitled to have them inserted without modification, so as to bind the underlessee to refer disputes with tenants of the hospital to the arbitration of the hospital, not to assign or underlet without the consent of the

**I. LANDLORD AND TENANT—AGREEMENT**  
—continued.

hospital, and to have his demises and assignments prepared by the solicitors of the hospital.

*Williamson v. Williamson* (L. R. 9 Ch. 729) distinguished. *HAYWOOD v. SILBER*

[30 Ch. D. 404, 34 W. R. 114 (C.A.)]

— Disclaimer of, by trustee in bankruptcy.

See BANKRUPTCY—DISCLAIMER. 1.

**II. LANDLORD AND TENANT—DISTRESS—**

*Authority to act as Distress Bailiff under Agricultural Holdings Act, 1883* (46 & 47 Vict. c. 61), ss. 52, 61.] A bailiff having levied a distress outside the district of the County Court Judge by whom he was appointed:—*Held*, by Cave and Wills, JJ., that such distress was good, the expression “a County Court” in sect. 52 of the Agricultural Holdings Act, 1883, not being used “in relation to a holding” (sect. 61); and that any County Court Judge has authority to appoint bailiffs to levy distresses in any part of England and Wales. *Ex parte SERJEANT. Re SANDERS* (or SANDARS) - 54 L. J. Q. B. 331, 52 L. T. 516, [49 J. P. 582]

2. — *Entry by raising Window partly open.*] Entry into a house for the purpose of distraining may lawfully be made by further opening a window which is partly open. *CRAETREE v. ROBINSON* [15 Q. B. D. 312, 54 L. J. Q. B. 544, 33 W. R. 936]

3. — *Mortgagor and Mortgagee—Receiver—Injunction—Conveyancing Act, 1881* (44 & 45 Vict. c. 41), ss. 19, 24.] Where a mortgagee has appointed a receiver under the above Act, the Court will restrain the mortgagor from distraining for rent due from a tenant of the mortgagee's property; and, *semble*, that this will be done even where the receiver is negligent in collecting the rents. *BAYLY v. WENT* - 51 L. T. 764, [W. N. (1884) 197]

4. — *Privilege—Ship in course of Building.*] A shipbuilder contracted to build a ship for the Plaintiff, payment to be by nine instalments at various stages of the ship's construction, and at the payment of each instalment the property in the ship as completed up to that time to vest in the Plaintiff.

Whilst the ship was building, the shipbuilder's rent became in arrear, and the Defendant, his landlord, distrained upon the ship for the amount of rent so due.

The Plaintiff having paid under protest the amount claimed, brought this action to recover the same.

*Held*, by Pollock, B., that, under the circumstances, the ship was liable to distress, and that the case did not come within any of the exceptions which exempt goods on the tenant's premises from liability to distress for rent due to the landlord. *CLARKE v. MILLWALL DOCK CO.*

[53 L. T. 316]

5. — *Protection from—Agistment of Cattle for “fair price”*—*Payment in kind*—46 & 47 Vict. c. 61, s. 45.] Live stock agisted for a fair equivalent is within 46 & 47 Vict. c. 61, s. 45 (the Agricultural Holdings Act, 1883), as taken in to be fed at a “fair price,” and may, therefore, be exempt from distress, even although such equivalent be not money.—Cows were agisted on the terms “milk for meat,” i.e., that the agister should

**II. LANDLORD AND TENANT—DISTRESS —**  
—continued.

take their milk in exchange for their pasturage:

—*Held*, by Coleridge, C.J., and Mathew, J., that the agistment was within the Act. *LONDON AND YORKSHIRE BANK v. BELTON* - 15 Q. B. D. 457, [54 L. J. Q. B. 568, 34 W. R. 31]

**III. LANDLORD AND TENANT—HOLDING OVER—**

*Action for mesne rates and for use and occupation—Acceptance by limited owner from incoming tenant of arrears of rent due under evicted tenancy—Payment by third party—Adoption—Evidence.*] H. was tenant to P. of lands under a lease which expired on the 29th of September, 1880. P. brought an ejectment to recover possession of the lands, and for mesne rates, and after he was in a position to mark judgment, an agreement was entered into in the month of November, 1884, between H. & P., by which P. agreed to grant a lease to H. for thirty-one years from the 29th of September, 1884, H. paying £860 on or before the 15th of December, as and for mesne rates up to that date, and for costs, and that H. should be at liberty to sell subject to the landlord's approval. H. not having paid such sum of £860, judgment for possession was entered on the 16th of December. After the entry of the judgment negotiations took place between P. & D., who had taken the lands temporarily for grazing from H. for a lease of the said lands to D., and on the 2nd of January, 1885, D. paid P. £860, and the following day signed a proposal for a lease for thirty-five years from the 29th of September, 1884, at the yearly rent of £200. P. was only tenant for life of the lands, and could not take a fine, and there was no mention in the agreement with D. of the payment by him of the £860. On the 6th of January, 1885, the writ in the present action was issued by P. against H. claiming £1000 damages for mesne profits from the expiration of the lease on the 29th of September, 1880, and in the alternative £1000 for use and occupation. H. by his defence claimed the benefit of the payment by D. of the £860, and by leave of the judge at the trial paid 6d. into Court on the count in trespass. At the trial P.'s agent deposed that he told D. that whoever gave him £860 would get the land. D., who was examined for H., deposed that he knew £860 was claimed from H. for arrears of rent and costs, and that he was willing to pay that sum on getting a good lease. The question left to the jury was “whether the £860 was paid by D. and received by P. as for the rent of the farm due by H.” They found that it was, and that the 6d. lodged in Court was sufficient.

Upon a motion by P. for a new trial:—

*Held*, that there was evidence proper to be submitted to the jury that the £860 was paid by D. and received by H. as and for the arrears of rent and costs, and that it was competent for H. to adopt and claim the benefit of the payment as a defence to the present action. *PURCELL v. HENDERSON* - 16 L. R. Ir. 213

[Affirmed by C. A., *ib.*, p. 466]

2. — *Writ of Possession when Plaintiff's Title has expired.*] Where a landlord has recovered judgment in an action against his tenant for the possession of premises which had been held over after the expiration of the tenancy, he

**III. LANDLORD AND TENANT — HOLDING OVER—continued.**

will be allowed to issue the writ of possession notwithstanding that his estate in the premises terminated after the commencement of the action and before the trial, unless it be unjust and futile to issue such writ, and it is for the Defendant to shew affirmatively that this will be the result of issuing such writ. *KNIGHT v. CLARKE*

[15 Q. B. D. 294, 54 L. J. Q. B. 509 (C.A.)]

**IV. LANDLORD AND TENANT — IMPROVEMENTS — Compensation — Counter-claim for, in Action for Rent—Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61), ss. 7, 8, 9, 57.]** A claim by a tenant for compensation under the above Act must, if disputed, be referred to arbitration, and cannot be made the subject of a counter-claim in an action for rent brought in the High Court by the landlord. So *held*, by Grove and Manisty, J.J. *GASLIGHT AND COKE CO. v. HOLLOWAY*

[52 L. T. 434, 49 J. P. 344]

2. — *Compensation — Notice of Claim — Agricultural Holdings Acts, 1875 (38 & 39 Vict. c. 92), ss. 9, 13, 15, 20, and 1883 (46 & 47 Vict. c. 61), ss. 1, 5, 7, 17, 62.]* A notice by a tenant in occupation of a tenancy current at the commencement of the Agricultural Holdings Act, 1883, of a claim for compensation for improvements executed after the commencement of that Act is good if given under the Act of 1883, though the compensation is to be based on the principles of the Act of 1875.

The compensation for such improvements must be calculated on the basis of the 1875, and not the 1883, Act. So *held*, by Field and Manisty, J.J. *SMITH v. ACOCK* - 53 L. T. 230, 49 J. P. 789

**V. LANDLORD AND TENANT—LEASE—Assignment of—Right of Assignor to Indemnity—Dilapidations—Mercantile Law Amendment Act, 1858 (19 & 20 Vict. c. 97), s. 5.]** On the dissolution of a partnership between H. and R., H. assigned to R. all his interest in two houses belonging to the partnership held under sub-leases from C. and D., and R. covenanted to pay the rents and observe the covenants and keep H. indemnified against them. R.'s executors sold the houses to B., and B. to a company which went into liquidation. The landlords C. and D. thereupon sued H. for the rent, and he paid it for the whole of the year 1882. D. also made a large demand against H. for breaches of covenants to repair, but H. made no payment. On the 15th of March, 1883, D. assigned his reversion to H., and in May, 1883, H. acquired C.'s reversion. In June, 1883, H. bought the leasehold interest in both houses from the liquidators of the company, and covenanted thenceforth to pay the rent and observe the covenants. H. sought to prove against the estate of R. for the sums paid for rent, for the rent payable at Lady Day, 1883, on D.'s house, and for the amount of the dilapidations in that house:—

*Held*, that the right of H., under R.'s covenant of indemnity, to prove for the rents which he had paid, was not taken away by his covenant in the assignment by the liquidators, which could not be extended to rents already due and paid:

*Held*, also, that this right was not defeated on the ground that the right of R.'s representatives, if they paid rent, to recover it from the owner of

**V. LANDLORD AND TENANT—LEASE—contd.**

the lease for the time being, was interfered with by the assignment from the liquidators to H., for that this assignment could not take away any right of action which R.'s executors might have against the persons entitled to the houses at the end of 1882, and that an assignor who pays rent has no lien on the term, and so cannot be prejudiced by its subsequent assignment:

*Held*, further, that the right was not defeated on the ground that H. on paying the rent became entitled to a right of distress from the reversioners, which he had destroyed by taking an assignment of the leases, and had therefore discharged the estate of R. by releasing a remedy to the benefit of which R. as a surety was entitled, for that a right of distress is not a security or remedy to the benefit of which a surety paying rent is entitled under the Mercantile Law Amendment Act (19 & 20 Vict. c. 97), s. 5:

*Held*, therefore, that H. was entitled to prove against R.'s estate for the rent paid in 1882 on both houses:

*Held*, also, that he was entitled to prove for the Lady Day rent on D.'s house:

But, *held*, that H. was not entitled to prove for the amount of dilapidations, for that he had sustained no damage by reason of them, inasmuch as he bought the leases from the liquidators at a less price in consequence of the breaches of the covenant to repair; nor for the Lady Day rent of C.'s house. *Re RUSSELL. RUSSELL v. SHOOLBRED*

[29 Ch. D. 254, 53 L. T. 365 (C.A.)]

2. — *Covenant to deliver up Premises in good Repair.]* A lessor is not deprived of any part of the ordinary damage recoverable on a breach of covenant by the lessee to deliver up the demised premises in good repair, by reason of the lessors effecting structural alteration in the premises after the determination of the lease. *INDERWICK v. LEECH* - - - 1 C. & E. 412

3. — *Furnished House — Implied Warranty.]* A tenant is not justified in determining a tenancy of a furnished house, because during the term a portion of the plastering of the ceilings (which were cracked and fractured at the commencement of the tenancy) fell in one room, and the plastering of the ceilings in other rooms was unsound, and liable to fall. On a letting of a furnished house, the implied term that it shall be fit for human habitation only applies to the condition of the premises at the commencement of the tenancy. *MACLEAN v. CURRIE* 1 C. & E. 361

4. — *Furnished House — Implied Warranty.]* One who has agreed to take a furnished house is not bound to fulfil his contract if the house be infected with measles at the date fixed for the commencement of the tenancy. If in such a case the lessor sue for rent, he must shew, to entitle him to succeed, that the house was in fact in a state fit for human occupation at the date fixed for the commencement of the term, notwithstanding a previous intimation by the tenant of his intention to repudiate the contract. *BIRD v. LORD GREVILLE* - - - 1 C. & E. 317

5. — *House partly furnished—Implied Warranty of fitness for Occupation—Insufficiency of Water Supply.]* A. & B. entered into an agreement for the lease of a partly furnished house,

**V. LANDLORD AND TENANT—LEASE—contd.**

together with a garden and a few acres of ground, for a term of five years. B. alleged that a false representation had been made by A. as to the sufficiency of the water supply, and, on the water supply failing, B. alleged that the house was uninhabitable, and refused to be bound by the agreement. There was evidence that the pipes had become stopped up when the house was in B.'s occupation:—

*Held*, by Bacon, V.C., upon the evidence, that there had been no misrepresentation by A.; and that, in a letting of this description the doctrine laid down in *Smith v. Marrable* (11 M. & W. 5), that there was an implied condition in the letting of a house that it should be reasonably fit for habitation, was inapplicable. *CHESTER v. POWELL. POWELL v. CHESTER* 52 L. T. 722, W. N. (1885) 67

6. — *Notice to determine Tenancy—Tenant not to be found—Delivery of Notice at demised Premises.* A lease of premises for twenty-one years contained a proviso that it should be lawful for the landlord or his assigns to put an end to the demise at the end of the first fourteen years by delivering to the tenant or his assigns six calendar months' previous notice in writing of his intention to do so. In an action by the assignee of the reversion to recover possession of the premises on the ground that the demise had been duly determined by notice under the proviso, it appeared that the lessee had disappeared some years previously, after having mortgaged the premises by way of underlease, that his address could not be found, and that written notice to determine the tenancy directed to him had been sent to his last known address, and had also been delivered to the mortgagee and to the occupier of the premises:—*Held*, that the action could not be maintained, as there had been no service of the notice on the lessee, and as he had not assigned the premises no other service would satisfy the terms of the proviso. *HOGG v. BROOKS* - 14 Q. B. D. 475, [15 Q. B. D. 256 (C.A.)]

7. — *Option to purchase Fee Simple—Nature of Interest conferred on Lessee—Real and Personal Representatives.* A lease of land contained a covenant by the lessor with the lessee, his executors, administrators, and assigns, that if the lessee, his executors, administrators, or assigns, should at any time thereafter be desirous of purchasing the fee simple of the demised land, and should give notice in writing to the lessor, his heirs or assigns, then the lessor, his heirs or assigns would accept £1200 for the purchase of the fee simple, and on the receipt thereof would convey the fee simple to the lessee, his heirs or assigns, or as he or they should direct. The lessee died intestate, and nearly twenty years after his death, but before the expiration of the term, his heir, who was also administrator of his personal estate, called on the devisee of the lessor to convey the fee simple to him in accordance with the covenant, and a conveyance was executed accordingly. The heir afterwards contracted to sell part of the property thus conveyed to him:—

*Held*, affirming the decision of Pearson, J. (24 Ch. D. 199, 52 L. J. Ch. 758, 48 L. T. 958, 32 W. R. 120, 1883 Dig., col. 205), that, on the true construction of the covenant, the option to

**V. LANDLORD AND TENANT—LEASE—contd.**

purchase was attached to the lease and passed with it; that it consequently passed as part of the lessee's personal estate to the administrator, and that the administrator could not make a good title to the purchaser unless the next of kin of the lessee concurred in the sale.

*Green v. Low* (22 Beav. 625) distinguished. *Re ADAMS AND THE KENSINGTON VESTRY* [27 Ch. D. 394, 54 L. J. Ch. 87, 51 L. T. 382, [32 W. R. 883 (C.A.)]

8. — *Renewable Lease—Devise of Leaseholds for Life, with Remainder over—Renewals by Tenant for Life—Purchase by Tenant for Life of Reversion—Ownership of the Fee.* The doctrine that a renewal of leaseholds by a tenant for life enures for the benefit of the remainderman applies equally to a purchase of the reversion.

*Randall v. Russell* (3 Mer. 190) considered.

Testatrix devised leaseholds, renewable by custom, to J. P. for the residue of the term, and after the death of J. P., during the residue of the term, to the children of J. P. in equal shares. J. P. renewed the leaseholds more than once, and finally purchased the reversion:—

*Held*, that the fee simple in the property passed by the devise in the will to the children of J. P., and became subject to the trusts of the will. *PHILLIPS v. PHILLIPS* 29 Ch. D. 673, 54 L. J. Ch. 943, [53 L. T. 403, 33 W. R. 863 (C.A.)]

9. — *Renewable Lease—Lease for Lives—Covenant for Renewal on dropping of one or more Lives—Construction.* A lessor demised hereditaments to the lessee his heirs and assigns for the natural lives of the lessee and two other persons and the longest liver of them, with a covenant that the lessor his heirs and assigns (upon the lessee his heirs or assigns "surrendering this present demise as hereinafter mentioned") should at any time thereafter at the request of the lessee his heirs or assigns "as often as one or two life or lives of and in the said hereditaments" should drop and be determined, renew and grant a further term "for any other life or two lives of any other person or persons to be nominated by the lessee his heirs or assigns in the stead of the persons' life or lives so dropping or determining"; the lessee his heirs or assigns paying to the lessor his heirs or assigns "for every such renewal for every life or lives of such person or persons so to be renewed as aforesaid the sum of 40s. only, and at the same time surrendering this present demise to be cancelled":—

*Held*, reversing the decision of the Court of Appeal (53 L. J. Q. B. 226, 50 L. T. 311, 32 W. R. 400, 48 J. P. 548), that upon the true construction of the covenant the right of renewal was neither perpetual, nor limited to one renewal for not more than two new lives, but was a right of renewal as often as any of the three original lives should drop, so that any such renewal might take place either on the dropping of any one of the said three lives, or after the dropping of any two of them, as the lessee might from time to time request. *SWINBURNE v. MILBURN*

[9 App. Cas. 844, 54 L. J. Q. B. 6, 52 L. T. 223, [33 W. R. 325 (H. L., E.]

10. — *Renewable Lease—Mortgage—Purchase of Reversion by Mortgagee—Mortgage of*



**V. LANDLORD AND TENANT—LEASE—contd.**

*Reversion—Rights of Mortgagees*—14 & 15 Vict. c. 104, s. 3—23 & 24 Vict. c. 124, s. 35.] An ecclesiastical lease of a house for a term of years, which was renewable by custom, though it contained no covenant by the lessors for renewal, was mortgaged, and the equity of redemption was afterwards assigned for value. The Ecclesiastical Commissioners, in whom the reversion had become vested, would not renew the lease, but before its expiration they agreed to sell the reversion to the assignee of the equity of redemption. The conveyance was not executed till after the expiration of the lease. While the negotiation for the purchase of the reversion was in progress the assignee borrowed £300, giving the lender a memorandum in writing, which stated that the money was to be secured by a mortgage from him of the house "so soon as he had completed the enfranchisement of the property from the Commissioners." The lender had no notice of the mortgage of the lease:—

*Held*, by Pearson, J., that the mortgagor could only hold the fee simple of the property subject to the mortgage of the lease, and that he (and consequently the lender of the £300) was not entitled to any prior lien on the property for the purchase-money of the reversion, notwithstanding the fact that the mortgagor was under no obligation to the mortgagees of the lease to obtain a renewal of it, or to purchase the reversion. *LEIGH v. BURNETT (or BURNELL)* — 29 Ch. D. 231, [54 L. J. Ch. 757, 52 L. T. 458, 33 W. R. 578]

11. — *Reservation of Right of Shooting—Overstocking Land with Game—Injury to Crops—Right of Action.* Where land is let to a tenant reserving the right of shooting over the land, the tenant may maintain an action against the persons entitled to the right of shooting for overstocking the land with game so as to cause damage to the tenant's crops. *FARRER v. NELSON* 15 Q. B. D. 258, [54 L. J. Q. B. 385, 52 L. T. 766, 33 W. R. 800, [49 J. P. 725]

12. — *Reservation of Shooting Rights—Regrant.* By an indenture of lease, an estate was demised at an annual rent by S. to H., "excepting and always reserving out of this demise" timber, mines, &c., "and also reserving to the lessor, his servants, &c., liberty of ingress" to cut, work, and take away, the trees and minerals; "and also by way of grant, and not of reservation, the exclusive right of hunting, coursing, and shooting upon and over the same demised premises, or otherwise to destroy the game and wild-fowl thereon being":—

*Held*, affirming the decision of Pearson, J., that the right of shooting was re-granted to the lessor, and that the words "and also by way of grant, and not of reservation," were not a resumption of the parcels of the lease so as to pass the right of shooting to the lessee. *HOUSTON v. SLIGO (MARQUIS OF)* (No. 2) — 52 L. T. 870 (C.A.)

13. — *Tenant-rights under—Abandonment of Tenancy.* A tenant of a farm from year to year, who was entitled to certain tenant-rights, took a lease of the farm for seven years, under which he became entitled to larger tenant-rights and allowances. In the middle of the term, being unable to pay the rent and continue the tenancy, he left the farm and, in effect, abandoned the position of

**V. LANDLORD AND TENANT—LEASE—contd.**

tenant, and did not bring an action of ejectment against his landlord, who was in possession under a distress for rent, and who remained at the tenant's request in possession after the distress was satisfied. No new agreement was made as to the tenant-rights and allowances:—

*Held*, by Stephen and Mathew, JJ., that, in the absence of any new agreement, the tenant's rights arose only at the expiration of the lease and on a substantial performance by the tenant of the covenants thereof, and that, as the tenant had in effect abandoned the tenancy, he was not entitled to any tenant-rights under the lease; and further, that any tenant-right he might have had previously while tenant from year to year was extinguished by his accepting the tenant-rights under the lease. *ENGLAND v. SHEARBURN* 52 L. T. 22, [49 J. P. 86]

— Agreement for.

*See LANDLORD AND TENANT—AGREEMENT.*

— Assignment by husband to trustees for wife. *See VOLUNTARY CONVEYANCE.* 1.

— Building contract, whether a. *See BUILDING CONTRACT.* 1.

— By mortgagor in possession. *See MORTGAGE—MORTGAGOR IN POSSESSION.* 1.

— By tenant in common to co-tenant—Use and occupation—Repairs. *See TENANT IN COMMON.*

— Covenants. *See COVENANT.*

— Disclaimer of, by trustee in bankruptcy. *See BANKRUPTCY—DISCLAIMER.*

— Evidence—Proof of execution of lease. *See FISHERY.* 2.

— Ground game—Right to kill. *See GROUND GAME ACT.*

— Income tax—Lessee—Premium for lease. *See REVENUE.* 4.

— Infant's—Surrender. *See INFANT.* 8.

— Liability of company under. *See COMPANY—VOLUNTARY WINDING-UP.* 5.

— Long term—Enlargement—"Rent having no money value." *See CONVEYANCING ACT.*

— Mistake—Rectification. *See MISTAKE.*

— Negotiations for—Solicitors' Remuneration Act, 1881. *See SOLICITOR—BILL OF COSTS.* 10.

**VI. LANDLORD AND TENANT—LIABILITIES**

— Defect in stairway in tenement—Personal injury—No implied warranty. *BOWE v. HUNKING* [46 Amer. R. 471 (U.S.)]

2. — *Repair—Covenant to—Notice.* A tenant having brought an action against his landlord for breach of a covenant by the latter to keep the drains in repair, the jury found that neither party knew of the defective condition of the drains before the damage occurred, and that the Plaintiff had not, and the Defendant had, the means of knowing:— *Held*, affirming the judgment of

# **VI. LANDLORD AND TENANT—LIABILITIES** *—continued.*

Wills, J. (1 C. & E. 391), that the defendant was not liable,

*Makin v. Watkinson* (L. R. 6 Ex. 25, 23 L. T. 592, 19 W. R. 286), and *London and South Western Ry. Co. v. Flower* (1 C. P. D. 77, 33 L. T. 687) approved and followed. *HUGALL (or HUGGALL) v. M'LEAN (or M'KEAN)* - - - 53 L. T. 94, [33 W. R. 588, W. N. (1885) 96 (C.A.)]

**VII. LANDLORD AND TENANT—MONTHLY TENANCY**—*Public-house—Collateral Contract to keep up Licence—Contract in Writing—Construction—Notice to Quit—Misdirection.* By agreement in writing the Defendant became a monthly tenant to the Plaintiffs (a firm of brewers) from the 1st July, 1869, of certain licensed premises, at a monthly rent, payable on the first day of each month, over and above all taxes, &c.; and the Defendant agreed to pay all rates, taxes, and assessments; and by another agreement in writing of the same date, and made between the Defendant, the Plaintiffs and A., reciting that the Defendant had become a monthly tenant of the premises, and that the Plaintiffs had, at the Defendant's request, agreed to transfer the beer and spirit licences attached to the premises to A., in whose name the Defendant proposed to carry on the business, in consideration of the sum of £60, it was agreed that the Plaintiffs should hold the licences and all renewals thereof as security for the payment of the said sum, and that the Defendant and A., so long as the said sum should remain due, and they or either of them should remain in possession of the premises, would deal exclusively with the Plaintiffs for all porter and stout to be consumed thereon, and sell same at the price directed by the Plaintiffs; and that the Defendant and A. would do everything necessary to obtain renewals of the licences, and would not transfer the licences or part with the possession of the premises without the consent of the Plaintiffs.

The Plaintiffs, on the 25th September, 1884, served notice to quit on the 1st November then next.

In an ejectment on the notice to quit, the Judge at the trial left the question to the jury, whether the notice was reasonable, and, upon the finding of the jury that it was not reasonable, directed a verdict for the Defendant:—

*Held*, that the tenancy was monthly, and determined, under the contract, by the month's notice given; that the Judge at the trial should have so construed the contract without leaving any question to the jury, and that the Plaintiffs were therefore entitled to recover possession. *BEAMISH v. COX* - - 16 L. R. Ir. 270 (since affirmed by [C. A., see *ib.*, p. 458])

**VIII. LANDLORD AND TENANT—RE-ENTRY**—*Breach of Covenant and Non-payment of Rent—Notice—Forcible Entry—Damages*—5 Ric. 2. st. 1, c. 8—*Conveyancing Act*, 1881 (44 & 45 Vict. c. 41), ss. 14 (1) (ii) (viii), 67.] Where a person has gained possession of property, but has no title to it, and is only a trespasser, he may be forcibly ejected by the rightful owner, so long as no personal injury is done to him.

Shortly before re-entering premises for non-payment of rent and breach of covenant, the lessors served upon the tenant the notice required

# **VIII. LANDLORD AND TENANT—RE-ENTRY** *—continued.*

by the Conveyancing Act, 1881, s. 14 (i), specifying the breach complained of:—

*Held*, by Kay, J., that, by reason of sub-s. 8 of the section, its provisions did not affect the law relating to re-entry for non-payment of rent; and under sub-s. 2 the Court had discretion to refuse relief against re-entry for breach of covenant on the ground of want of notice, and the circumstances of this case were such that the Court would refuse relief. *SCOTT v. BROWN & CO.*

[51 L. T. 746, W. N. (1884) 209]

2. — *Costs—Forfeiture—Non-payment of Rent—Relief after Trial—Disallowance of Costs to Plaintiff*—*Common Law Procedure Acts*, 1852 (15 & 16 Vict. c. 76), s. 210; 1860 (23 & 24 Vict. c. 126) s. 1.] Where in an action of ejectment upon a forfeiture by non-payment of rent the Plaintiff obtains judgment, but without costs, the Defendant may obtain relief from the forfeiture under the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 1, without being required to pay the Plaintiff any costs other than those of the summons for relief. *CROFT v. LONDON AND COUNTY BANKING CO.* - - 14 Q. B. D. 347, [54 L. J. Q. B. 277, 52 L. T. 374, 49 J. P. 356 (C.A.)]

3. — *Relief—Breach of Covenant—Notice—“Lessee”—Assignee—Conveyancing Act*, 1881 (44 & 45 Vict. c. 41) s. 14 (1).] An assignee of a lease is a “lessee” within the meaning of sect. 14, sub-s. 1, of the above Act. A notice under that sub-section, addressed to A. B. (the original lessee), and “all others whom it doth or may concern,” and served on the persons in occupation of the demised premises, is sufficiently addressed to, and validly served on, the assignee of the lease. *CRONIN v. ROGERS* - - 1 C. & E. 348

**IX. LANDLORD AND TENANT—RENT—Payment of—Estoppel by—Assignee of Reversion—Jus tertii.** Where a person claiming to be the assignee of the reversion receives rent from the tenant by fraud or misrepresentation, such payment is no evidence of title, but where there is no fraud or misrepresentation, such payment is *prima facie* evidence of title, and the tenant can only defeat that title by shewing that he paid the rent in ignorance of the true state of the title, and that some third person is the real assignee of the reversion and entitled to maintain ejectment.

Hence, in an action for rent by the alleged assignee of the reversion, where rent had been paid by the tenant to the agent of the alleged assignee, it was held (by Cave, J.) to be no defence for the tenant merely to shew that the alleged assignee had no title to the reversion. *CARLTON v. BOWCOCK* - - 51 L. T. 659

— Action for, against executor *de son tort*.

See EXECUTOR—DE SON TORT. 2.

— Action for—Defendants in Scotland—Service of writ.

See PRACTICE—WRIT. 8.

— Distress for.

See LANDLORD AND TENANT—DISTRESS.

— Order to pay, to third party.

See ASSIGNMENT OF DEBT. 2.

— Payment by assignor of lease.

See LANDLORD AND TENANT—LEASE. 1.

**IX. LANDLORD AND TENANT—RENT—contd.**

—Peppercorn—Receipt—Production of—Conveyancing Act.

See VENDOR AND PURCHASER—TITLE. 4.

—Re-entry for non-payment of.

See LANDLORD AND TENANT—RE-ENTRY.

—“Rent having no money value.”

See CONVEYANCING ACT.

**X. LANDLORD AND TENANT—YEARLY TENANCY—Half-year's Notice and Six Months' Notice, Distinction between—Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61), s. 33.]**

A tenancy under a written agreement from year to year “until six months' notice shall have been given . . . in the usual way to determine the tenancy,” is not one “where a half-year's notice . . . is by law necessary” within the Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61), s. 33, which, therefore, does not apply so as to render a year's notice necessary for the determination of the tenancy.—Judgment of the Queen's Bench Division (15 Q. B. D. 403, 54 L. J. Q. B. 400, 53 L. T. 52, 49 J. P. 423) affirmed. *BARLOW v. TEAL* - 15 Q. B. D. 501, 54 L. J. Q. B. 564, [34 W. R. 54 (C.A.)]

—Manor—Tenant—Presumed grant—Feoffment.

See MANOR.

**LANDLORD AND TENANT—Action by landlord against company in liquidation—Costs—Priority.**

See COMPANY—VOLUNTARY WINDING-UP. 7.

—Agreement to appoint valuers—Rule of Court.

See ARBITRATION. 2.

—Fixtures—Mortgage of.

See FIXTURES.

—Reinvestment—Solicitors' Remuneration Act, 1881.

See SOLICITOR—BILL OF COSTS. 7.

**LANDS CLAUSES ACT—Compensation—Lands “injuriously affected”—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18)—House “injuriously affected”—Special value as a Public-house.]** Under statutory powers conferred by an Act incorporating the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), a railway company stopped up a street in which were a house and premises used as an hotel, whereby the value thereof for using, selling, or letting as an hotel and public-house was diminished.—*Held*, by Mathew and Day, JJ., that the owner was entitled to compensation under the Lands Clauses Act, 1845, for the depreciation in the special value of the premises as an hotel and public-house. *WADHAM v. NORTH EASTERN RAILWAY COMPANY* - 14 Q. B. D. 747, [54 L. J. Q. B. 343, 52 L. T. 894, 33 W. R. 215, 49 J. P. 599]

[Affirmed by C. A., see W. N. (1885) 221.]

2. — Compensation—Lands “injuriously affected”—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 63—Part of Building Estate taken for Sewage Farm—Value of other Parts thereby depreciated.] Part of land laid out as a building estate was taken by a local board under an Act incorporating the Lands Clauses Act, 1845 (8 & 9

**LANDS CLAUSES ACT—continued.**

Vict. c. 18), for the purposes of a sewage farm, whereby the value of other parts of the land near to the part so taken was depreciated, even in the absence of any nuisance arising from the sewage farm when made:—*Held*, by Mathew and Day, JJ., that the owner of the estate was entitled to compensation under the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 63, not only in respect of the land taken, but also for damage sustained by reason of the “injuriously affecting” the other lands by the exercise of the statutory powers. *REG. v. ESSEX*

[14 Q. B. D. 753, 54 L. J. Q. B. 459, 52 L. T. 926, [33 W. R. 214, 49 J. P. 87]

3. — Compensation—Settlement by Justices of the Amount—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 24—Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), ss. 6, 140—Limitation of Time—11 & 12 Vict. c. 43, s. 11.] The determination by justices under sect. 24 of the Lands Clauses Act, 1845, of the compensation to be paid by a railway company to a landowner for having in the construction of the railway injuriously affected his land, is not an order of the justices for the payment of money within sect. 11 of 11 & 12 Vict. c. 43 (which limits the time for making a complaint to six months from the time when the matter of such complaint arose), and therefore the justices have jurisdiction under sect. 24 of the Lands Clauses Act, 1845, to hear and determine the question of such disputed compensation, although the application be made more than six months after the land has been so injuriously affected.—*Re Edmundson* (17 Q. B. 67) overruled. *REG. v. EDWARDS AND EASTERN AND MIDLAND COMPANY* - 13 Q. B. D. 586, 53 L. J. M. C. 149, [51 L. T. 586, 49 J. P. 117 (C.A.)]

4. — Compensation—Sewer—Right of Access to—Injuriously affecting such Right—Lands Clauses Act, 1845, s. 68—Railways Clauses Act, 1845, s. 6.] The Plaintiffs, in 1843, under the authority of a local Act, constructed a sewer on land part of which had been bought by the Defendants, a railway company, but had not then been used for their works. Part of the remainder was bought by the Defendants after the construction of the sewer, but no part of the land was the Plaintiffs', or had ever been granted to them. The local Act not only authorized the Plaintiffs to make the sewer, but vested it in them, with the duty to repair it, without, however, giving them any express right of access thereto. In 1863 the Defendants, in exercise of the powers conferred on them by their special Act, with which was incorporated the Railways Clauses Consolidation Act, 1845, constructed an embankment over the sewer which, though it made it less easy, did not prevent the Plaintiffs getting access to the sewer in order to repair it. The Plaintiffs being obliged afterwards to repair, and having incurred extra expense in doing so in consequence of such embankment, claimed compensation from the Defendants under sect. 68 of the Lands Clauses Consolidation Act, 1845, and sect. 6 of the Railways Clauses Consolidation Act, 1845, for injuriously affecting the Plaintiffs' interest in the sewer:—*Held*, by the Queen's Bench Division, that the Plaintiffs had no interest in land within the meaning of the Lands Clauses Consolidation Act, 1845, s. 68, and

**LANDS CLAUSES ACT—continued.**

therefore could not maintain the claim to compensation:—*Held*, by the Court of Appeal, that as a right of access to the sewer had not been expressly given by the local Act but had to be implied, the right of access which ought to be implied was not any particular mode of access, but such only as was reasonably necessary for enabling the repair of the sewer to be done, and as that had not been prevented by the Defendants' embankment, but only rendered less easy and convenient, the Plaintiffs had no right to compensation. *MAYOR OF BIRKENHEAD v. LONDON AND NORTH WESTERN RAILWAY COMPANY* - 15 Q. B. D. 572, [55 L. J. Q. B. 48, 49 J. P. 135 (C.A.)]

5. — *Costs—Entry on Land—Abandonment of Railway—Costs of "Taking Land"*—8 & 9 Vict. c. 18, ss. 80, 85.] A railway company gave notice to treat for a piece of land, and no agreement having been come to with the owners, they entered on the land under the powers of the 85th section of the Lands Clauses Act, and paid the deposit into Court. Afterwards the company obtained an Act by which they were empowered to abandon that part of their undertaking, but it was enacted that the abandonment should not prejudice any landowner's rights to compensation for damage done by entry and occupation, and that the compensation should be determined in the manner provided by the Lands Clauses Act. The owners of the land then entered into an agreement with the company fixing the amount of compensation at £1350, but providing that this should not include costs, charges, and expenses which the owners might be entitled to recover under the company's Acts, but that such costs, charges, and expenses should be recoverable from the company in addition to the compensation as if the agreement had not been entered into. The company objected to pay the costs of ascertaining the amount of the compensation on the ground that the land had not been taken within the meaning of the 80th section of the Lands Clauses Act. They also objected to pay the costs of the preparation of the agreement:—

*Held* (affirming the decision of Kay, J.), that the land had been "taken" within the meaning of the 80th section, and that the company must pay the costs of ascertaining the amount of compensation and of the preparation of the agreement. *Re SWINDON, &c., RY. ACT. CHARLTON (OR CHARLSTON) v. ROLLESTON* - 28 Ch. D. 237, [54 L. J. Ch. 233, 51 L. T. 612 (C.A.)]

6. — *Costs—Order directing investment on mortgage to be treated as permanent investment—Application for transfer to persons absolutely entitled*—8 & 9 Vict. c. 18, s. 80.] Where a railway company had taken lands compulsorily under the above Act, the compensation money was invested in reduced annuities, the company paying the costs. The fund was subsequently reinvested on mortgage, the company again paying the costs. On this occasion it was ordered that, for the purposes or costs of any future application, such reinvestment should be treated as permanent.

An arrangement for a transfer of the mortgage security having been entered into by the owner of the fund, an application was made to the Court for a declaration that the transferees were abso-

**LANDS CLAUSES ACT—continued.**

lutely entitled to the moneys secured by the mortgage.

*Held*, by Kay, J., that the company was not liable to pay the costs of this application, the meaning of the previous order being that it was not to be subjected to the payment of the costs of any future application in respect of the purchase-moneys. *Re GEDLING RECTORY* 53 L. T. 244, W. N. (1885) 158

7. — *Costs—Payment out—Funds in Court paid in for Lands taken by Metropolitan Board of Works—Infants attaining twenty-one and becoming entitled to shares within one month of each other—Two summonses taken out for Payment—Orders made varied by making one order and directing one set of costs.*] *Re ELISHA WILSON'S ESTATES* - - - W. N. (1885) 14

8. — *Purchase-money—Interest on—Land subject to mortgage—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 108—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78).*] In the case of a compulsory purchase under the Lands Clauses Act, interest is payable by the purchaser to the vendor from the time when possession might have been taken, it appearing that a good title could be shewn.

And the land being subject to mortgage, interest is payable by the vendor to the mortgagees in lieu of notice.

*Re Pigott & G. W. Ry.* (18 Ch. D. 146, 50 L. J. Ch. 679, 44 L. T. 792, 29 W. R. 727) followed. *SPENCER-BELL TO THE LONDON AND SOUTH WESTERN RY. CO. & THE METROPOLITAN DISTRICT RY. CO.* - - - 33 W. R. 771

9. — *Purchase-money—Payment out of Court—Railway Company—Purchase of Land—Person "becoming absolutely entitled"—Trustees with Power of Sale—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 69.*] A share of stock in Court, which represented money paid into Court by a railway company for the purchase of land taken under their statutory powers, had been assigned by the beneficial owner to trustees, on trust for sale and conversion, at the request in writing of herself during her life and afterwards at the discretion of the trustees, and to hold the proceeds on certain trusts:—

*Held*, by Pearson, J., that, the settlor joining in the petition, and the company not objecting, the share might be transferred to the trustees as persons "becoming absolutely entitled" within the meaning of sect. 69 of the Lands Clauses Consolidation Act, 1845. *Re WARD'S ESTATES* [28 Ch. D. 100, 54 L. J. Ch. 231, 33 W. R. 149]

10. — *Purchase-money—Payment out—Permanent Investment—Settled Land Act, 1882, s. 25 (iv.)—Rules of Supreme Court, 1883, Order LV., r. 2, sub-r. 7.*] In applications for payment out of Court and investment under the Settled Land Act, 1882, of funds in Court representing the purchase-money of lands taken under the provisions of the Lands Clauses Act, 1845, the Court has a discretion under the Rules of Supreme Court, 1883, Order LXX., rule 1, and, where an application by petition is cheaper and more expeditious than by summons, will not disallow the costs of a petition, although the proceeding falls within the Rules of Supreme Court, 1883, Order

**LANDS CLAUSES ACT—continued.**

LV., r. 2, sub-r. 7, as business to be transacted in Chambers.

In such cases, however, the option of proceeding by petition or summons is at the applicant's risk.

*Re BETHLEHEM AND BRIDEWELL HOSPITALS*

[30 Ch. D. 541, 54 L. J. Ch. 1143, 53 L. T. 558]

11. — *Purchase-money—Payment out of Court—Petition or Summons—Cash less than £1000 and securities less than £1000; but both together exceeding £1000—O. LV., r. 2 (ii.)* *Re HAWORTH* — — — **W. N. (1885) 48**

12. — *Purchase-money—Settled Lands taken by Railway Company—Redemption of tithe rent-charge.* The tenant for life of settled lands sought to have the money lodged in Court by a railway company for the purchase of a part of the lands applied in the redemption of tithe rent-charge under the Irish Church Act, 1869, s. 32. The Court declined to sanction such application of the money. *Ex parte TOTTENHAM. Re DUBLIN, &c., Ry. Co.* — — — **13 L. R. Ir. 479**

13. — *Superfluous Lands—Sale of—Railway Company—Land previously subject to statutory Prohibition against building.* An Inclosure Act passed in 1806 provided that no buildings should at any time thereafter be erected on a certain strip of land. In 1865 a railway company under their statutory powers acquired a portion of the strip of land for the purposes of their undertaking. A part of the land thus acquired became superfluous land, and the company in 1868 sold and conveyed the superfluous part to a purchaser who demised it to the defendant. The defendant in 1885 commenced building on the land:—

*Held*, by Pearson, J., that the land acquired by the company was freed from the prohibition of building only for the purposes of the company's undertaking, and that, when part of it was sold as superfluous land, the prohibition of building revived in respect of that part.

An injunction to restrain the Defendant from building on the land in contravention of the provisions of the Inclosure Act was granted at the suit of an owner of adjoining land. *BIRD v. EGGLETON. BIRD v. PONSFORD* **29 Ch. D. 1012, [54 L. J. Ch. 819, 53 L. T. 87, 33 W. R. 774, 49 J. P. 644]**

14. — *Taking Lands—Easement—Railway Company—Compulsory Powers—Hereditaments—“Land,” whether includes Incorporeal Hereditaments—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 3, 16, 84, 85.* By a special Act the S. Co. were authorized to make a railway and to carry it across the railway of the G. W. Co., at one point by a bridge over and at another by an archway under that railway, the archway to remain the property of the G. W. Co. The Act by sect. 8, which was inserted at the instance of the G. W. Co. for their protection, provided that the S. Co. should not purchase and take any land of the G. W. Co. which the S. Co. were authorized to use, enter upon or interfere with, but that the S. Co. might purchase and take, and the G. W. Co. should sell and grant accordingly, an easement or right of using the same in perpetuity for the purposes of the Act; and by sect. 9 that if any dispute should arise respecting the matters aforesaid it should be settled

**LANDS CLAUSES ACT—continued.**

by an arbitrator to be appointed under the Act. The Lands Clauses Act, 1845 (except where expressly varied by the Act) was incorporated therewith, and it was enacted that the words and expressions to which meanings were assigned by the Lands Clauses Act should have the same respective meanings unless there was something in the subject or context repugnant to such construction.

The S. Co. gave the G. W. Co. a notice to treat for the purchase of an easement or right in or over lands of the G. W. Co. for the purposes of the crossings, and shortly afterwards a notice of their desire to enter upon and use the lands for those purposes, and of their intention to apply to the Board of Trade to appoint a surveyor to determine the value of such easement or right. The valuation was made, and the S. Co. deposited the amount and entered into a bond under sect. 85 of the Lands Clauses Act.

The G. W. Co. having brought an action for an injunction to restrain the S. Co. from entering or continuing upon the lands mentioned in the notice to treat or from putting in force any of the powers of the special Act or of the Lands Clauses Act in relation to the compulsory purchase of land, on the ground that the capital of the S. Co. had not been duly subscribed as required by sect. 16 of the Lands Clauses Act:—

*Held*, by Lords Bramwell and FitzGerald, affirming the decision of the Court of Appeal (22 Ch. D. 677, 52 L. J. Ch. 306, 47 L. T. 709, 31 W. R. 479, 1883 Dig. col. 213), Lord Watson dissenting, that the S. Co. could not be restrained on that ground:

By Lord FitzGerald, That (1) the assertion of the rights conferred by sect. 8 of the special Act, was not a “putting in force of the powers of the Lands Clauses Act or of the special Act in relation to the compulsory taking of land”: and (2) that even if the perpetual easements created by sect. 8 of the special Act would constitute “land” within sect. 16 of the Lands Clauses Act, yet the case had been taken out of the compulsory powers of the Lands Clauses Act by sect. 8 of the special Act. *GREAT WESTERN RAILWAY COMPANY v. SWINDON AND CHELTENHAM RAILWAY COMPANY* **[9 App. Cas. 787, 53 L. J. Ch. 1075, 51 L. T. 798, [32 W. R. 957, 48 J. P. 821 (H.L., E.)]**

15. — *Taking Lands—Notice to take part only—Compensation—Lands Clauses Act, 1845, s. 92—Special Act—Warrant for jury.* The defendant company under a special Act had power (notwithstanding sect. 92 of the Lands Clauses Act) to take portions only of scheduled properties, “if such portions can, in the judgment of the jury, arbitrators, or other authority assessing or determining the compensation under that Act, be severed from such properties without material detriment thereto.” The company had served notice on the plaintiffs of their intention to take a part of their manufactory. The plaintiffs gave a counter-notice requiring them to take the whole. The company issued a warrant to the sheriff to summon a jury to assess the value of the portion they required. The plaintiffs gave the company notice that they should raise the question whether that portion could be severed without material detri-

**LANDS CLAUSES ACT—continued.**

ment to the property. A dispute having arisen whether in this state of things the company would be bound to take the whole if the jury decided against them on the question of severance, the plaintiffs brought an action, and moved for an injunction to restrain the company from proceeding further on their warrant unless and until they should have consented to take the whole of the property if the jury decided the portion could not be severed without material detriment:—

*Held*, by Pearson, J., that the company could not be deprived of their right, if the jury decided against them, to abandon their notice to treat altogether, but that the warrant should have raised two issues: (1) Whether the portion could be severed without serious detriment to the property: (2) If so, the amount of the compensation to be paid by the company, including damages for severance. *MORRISON WOOD & Co. (or WOOD) v. GREAT EASTERN RAILWAY COMPANY* 53 L. T. 384, W. N. (1885) 175

16. — *Taking Lands—Notice to treat—“House”—Railway Company taking part of a House to take the whole—Close—Private Road—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 92.* A house and garden were surrounded by a wall. A gateway in the wall opened into a paddock surrounded by a high hedge of an ornamental kind. From the gateway the back road to the house passed through the paddock to a public road which ran along the far side of the paddock fence:—

*Held*, by Bacon, V.C., that the paddock was part of the house within sect. 92 of the Lands Clauses Act, 1845. *BARNES v. SOUTHSEA RAILWAY COMPANY* 27 Ch. D. 536, 51 L. T. 762, 32 [W. R. 976]

17. — *Taking Lands—Notice to treat—Service on Occupier of Part of Premises—Notice adopted by Owner—Validity of Service—Reference to Arbitration—Arbitrator neglecting or refusing to act—Power of other Arbitrator to proceed ex parte—Lands Clauses Act, 1845, ss. 18, 19, 23, 25, 27, 28, 30.* Where arbitrators have been appointed under sect. 25 of the Lands Clauses Act, 1845, and one arbitrator refuses or neglects for seven days to concur in the appointment of an umpire, the other arbitrator has power, under sect. 30 of the Act, to proceed *ex parte* to make an award, and the previous appointment of an umpire is not in such a case a condition precedent to the *ex parte* proceedings.

A corporation, three days before the expiration of their compulsory powers, without making any attempt to discover and serve the owner of the property, served a notice to treat on an occupier of part of the premises comprised in the notice to treat, who was the agent of the owner for the management of his property. The occupier took it the same day to the solicitor of the owner, and also wrote to the owner; but it did not appear that, as a matter of fact, the notice came to the hands of the owner before the three days had expired. The owner, however, after the expiration of the three days gave a counter notice under sect. 92 requiring the corporation to take the whole of his property. This notice he subsequently withdrew, and required the corporation

**LANDS CLAUSES ACT—continued.**

to proceed with the purchase of the land specified in their notice to treat, which they declined to do:—

*Held*, by North, J., that the service of the notice to treat was irregular and invalid, and that the owner could not, by his subsequent adoption of the notice, cure the irregularity and compel the corporation to proceed with it.

The conditions necessary for service of a notice to treat discussed. *SHEPHERD v. CORPORATION OF NORWICH* 30 Ch. D. 553, 54 L. J. Ch. 1050, 53 L. [T. 251, 33 W. R. 841]

18. — *Taking Lands—Notice to treat—Bad Counter-Notice—Lands Clauses Act, 1845, s. 92—Companies Clauses Act, 1845, s. 97.* The acceptance by the solicitors of a railway company of a counter notice under sect. 92 of the Lands Clauses Act, to take property which the company is not compellable to take under that Act, is not binding on the company. *TREADWELL v. LONDON AND SOUTH WESTERN RY. CO.* 54 L. J. Ch. 565, [51 L. T. 894, 33 W. R. 272, W. N. (1884) 233]

19. — *Taking Lands—Special Act authorizing compulsory Purchase of particular lands—Prior special Act granting to another corporation rights respecting such lands.* *REGENT'S CANAL CITY AND DOCKS CO. v. SCHOOL BOARD FOR LONDON* - - - W. N. (1885) 4

**LAPSE.**

*See WILL—CONSTRUCTION.* 21—24.

— *Devise—Debt due from heir-at-law—Set-off.*  
*See SET-OFF.*

— *Legacy to hospital—Cy-près.*  
*See CHARITY.* 2.

**LARCENY.**

*See CRIMINAL LAW.* 12—14.

**LEASE.**

*See LANDLORD AND TENANT—LEASE.*

— *Agreement for.*

*See LANDLORD AND TENANT—AGREEMENT.*

— *Disclaimer of, by trustee in bankruptcy.*  
*See BANKRUPTCY—DISCLAIMER.*

**LEGACY.**

*See WILL.*

— *Contingent—Maintenance of infant.*  
*See INFANT.* 6.

— *Interest on—Delay in realizing estate.*  
*See LIMITATIONS, STATUTES OF.* 4.

**LEGACY DUTY ACT**—Application under—Fund exceeding £1000.

*See PRACTICE—CHAMBERS.* 8.

**LEGITIMACY**—Evidence—Declarations of deceased person.

*See EVIDENCE.* 3, 4.

**LETTERS**—*Property in—Sender and Recipient—Restraining Publication.* The property in and the right to retain letters remains in the person to whom they are sent; but the sender has still that kind of interest, if not property, in the letters which enables him to restrain their publication, unless it can be clearly shewn that such publication is necessary for the vindication of character.

**LETTERS—continued.**

So held, by BACON, V.C. *LYTTON (EARL OF) v. DEVEY & SWAN SONNENSCHN & Co.*

[54 L. J. Ch. 293, 52 L. T. 121, W. N. (1884) 203

— Executor's right to, written to testator.

See EXECUTOR—POWERS.

**LETTERS OF ADMINISTRATION.**

See ADMINISTRATOR.

**LIBEL.**

See DEFAMATION.

**LICENCE—Inn.**

See INN.

**LIEN**—Auctioneer's, on proceeds of sale.

See AUCTIONEER.

— Maritime—Foreign ship.

See SHIP—NECESSARIES.

— Sale of goods—End of transit.

See SALE OF GOODS. 2.

— Solicitor's.

See SOLICITOR—LIEN.

**LIFE INSURANCE.**

See INSURANCE, LIFE.

**LIGHT**—*Ancient Light—Rebuilding—Alteration in Position—Preservation of Ancient Light.* In rebuilding a house, which had an ancient light in its ground floor front room, the front wall, which originally stood out beyond the general building line four feet at one end and seven feet at the other, was set back into the general building line; and in the new front wall was placed a window, the position of which corresponded to a great extent with the position of the ancient light in the old front wall. The new room was about the same frontage breadth as the old, but included little more than half the site of it, viz., a depth of nine feet at one end, and less than four feet at the other:—

Held, by Kay, J., that the right to the ancient light had not been lost. *BULLERS v. DICKINSON*

[29 Ch. D. 155, 54 L. J. Ch. 778, 52 L. T. 400,

[33 W. R. 540

2. — *Ancient Lights—Rebuilding of Premises—Advancement of Wall.* The owner of a dominant tenement preserves his right to ancient lights, notwithstanding the rebuilding and altering of his premises, if there be no evidence that he has intentionally abandoned them, and this rule applies not only to the retirement, but also to the advancement, of the plane of the wall containing the ancient lights.

S., in 1872, pulled down some old buildings containing windows that were ancient lights, and rebuilt them at a higher elevation, putting in larger and more numerous windows, but blocking up some of his own ancient lights. He had preserved no exact record of the positions and dimensions of the ancient lights, but it had been found by a referee that substantial portions of the new windows corresponded with portions of the old windows, and admitted light which would have passed through the latter. In rebuilding, S. advanced the east wall so that the plane of it was nearer to the Defendant's opposite buildings than it formerly was, by distances varying from 2 ft. 3 in. to 13 in. The Defendant having pulled down his old buildings opposite S.'s east wall, and having

**LIGHT—continued.**

commenced to re-erect them so as to interfere with the access of light to the windows in question:—

Held, by North, J., that S. was entitled to an injunction in respect of such portions of his windows as corresponded with those in the east wall of his old buildings. *SCOTT v. PAPE*

[54 L. J. Ch. 914, 53 L. T. 598

3. — *Obstruction—Injunction or Damages—Discretion of Court—Lord Cairns' Act (21 & 22 Vict. c. 27), s. 2.* In exercising the discretion given by sect. 2 of Lord Cairns' Act, to award damages in substitution for an injunction, in the case of a substantial interference with a Plaintiff's ancient lights, the Court will not, when the result of the Defendant's buildings would be, if they were allowed to continue, to render the Plaintiff's property absolutely useless to him, compel the Plaintiff to sell his property out and out to the Defendant. But, if the injury to the Plaintiff will be less serious, and his property will remain substantially useful to him, if the Defendant's buildings are permitted to continue, the Court may exercise its discretion by awarding the Plaintiff damages in lieu of an injunction, and for the purpose of exercising that discretion the Court will take into consideration the nature and situation of the property, e.g. the circumstance that it is situate in the centre of a large city, such as London.

*Aynsley v. Glover* (L. R. 18 Eq. 544), *Krehl v. Burrell* (7 Ch. D. 551, 47 L. J. Ch. 353, 38 L. T. 407), and *Smith v. Smith* (L. R. 20 Eq. 500, 44 L. J. Ch. 630, 32 L. T. 787, 23 W. R. 771) considered. *HOLLAND v. WORLEY* 26 Ch. D. 578,

[54 L. J. Ch. 268, 50 L. T. 526, 32 W. R. 749,

[49 J. P. 7

4. — *Obstruction—Injunction or Damages—Discretion of Court—Money Payment an adequate Compensation—Lord Cairns' Act (21 & 22 Vict. c. 27), s. 2.* *ALLEN v. AYRES* W. N. (1884) 242

5. — *Obstruction—Alteration of Windows—Interim Injunction—Balance of Convenience.* The Plaintiffs being the owners of an ancient building which had numerous windows, pulled it down and rebuilt it. A few of the windows in the new house included the space occupied by ancient windows, but were of larger dimensions; several others included some portion of the space occupied by ancient windows; and in some cases the spaces occupied by ancient windows were entirely built up in the new house. The Defendants commenced to build a house on the opposite side of the street, which, if completed according to the plans, would materially interfere with the light coming to the Plaintiffs' windows.

On a motion for an interim injunction the Court, holding that the Plaintiffs had shewn an intention to preserve, and not to abandon, their ancient lights, and that there was a fair question of right to be tried at the hearing, and considering that the balance of convenience was in favour of granting an injunction rather than of allowing the Defendants to complete their building with an undertaking to pull it down if required to do so, granted an injunction till the hearing.

The order of Bacon, V.C., affirmed.

**LIGHT—continued.**

*Hutchinson v. Copestake* (9 C. B. (N.S.) 863) and *Tapling v. Jones* (12 C. B. (N.S.) 826, 11 H. L. C. 290) considered. *NEWSON v. PENDER* [27 Ch. D. 43, 52 L. T. 9, 33 W. R. 243 (C.A.)]

— Implied reservation — Notice — Building scheme.

See **EASEMENT**.

**LIGHTER**—Letting of, “without risk of craft.”

See **SHIP—CHARTERPARTY**. 8.

**LIGHTHOUSE**—Rateable value.

See **POOR-RATE**. 7.

**LIMITATION OF LIABILITY.**

See **SHIP—MERCHANT SHIPPING ACTS**.

— Action of.

See **PRACTICE—ADMIRALTY**. 9, 11, 12.

**LIMITATIONS, STATUTES OF**—*Covenant to pay Rent or Royalty—Action on—Statutes of Limitations*; 3 & 4 Will. 4, c. 27, ss. 40, 42: 3 & 4 Will. 4, c. 42, s. 3: 37 & 38 Vict. c. 57, s. 8.] A lease of mines, granted in 1859, contained a covenant by the lessees to pay a rent or royalty in respect of minerals from other lands carried, by or by the authority of the lessees, over the surface of the mining ground. In 1883 an action on the covenant was brought to recover royalties in respect of minerals so carried since 1866.

*Held*, by North, J., that sect. 8 of 37 & 38 Vict. c. 57 did not apply, but that, on the ruling in *Hunter v. Nockolds* (1 Mac. & Gor. 640), the Plaintiff was entitled to an account of the royalties become payable since 1866. *DARLEY v. TENNANT*

[53 L. T. 257]

2. — *Devise of Realty on Trust to pay Debts—No Real Estate.*] A devise of real estate upon trust to pay debts does not prevent the operation of the Statute of Limitations when the testator leaves no real estate to support the trust. *Ex parte SMITH. Re HEPBURN* 14 Q. B. D. 394, 54 L. J.

[Q. B. 422]

3. — *Disability—English and American cases construing Statutes of Limitation as affected by disability provisions reviewed.* *McDONALD v. HOVEY* — — — 110 U.S. 619

4. — *Legacy—Interest—Delay in realization of Estate—Statute of Limitations—37 & 38 Vict. c. 57, s. 10.*] The property of a testatrix who died in 1869 consisted mainly of a reversionary interest. This interest was not sold by the executors, and it did not fall into possession until 1881. In the opinion of the Court the executors had acted for the benefit of the estate in not selling the reversion:—

*Held*, by Pearson, J., that legatees under the will who had waited for the payment of their legacies until after the falling in of the reversion were entitled, not merely to six years' arrears of interest, but to interest on their legacies from the expiration of one year after the death of the testatrix. *Re BLACHFORD. BLACHFORD v. WORSLEY* [27 Ch. D. 676, 54 L. J. Ch. 215, 33 W. R. 11]

5. — *Married Women's Property Act, 1882 (45 & 46 Vict. c. 75)—Action by Married Woman for Tort during Coverture—8 & 9 Vict. c. 100, s. 105—21 Jac. 1, c. 16, ss. 3, 7.*] The effect of the Married Women's Property Act, 1882, is to

**LIMITATIONS, STATUTES OF—continued.**

make a married woman discover from the date of the passing of that Act in respect of torts committed against her during coverture, and she is entitled to bring an action in respect of a tort committed during coverture, and before 1882, which would otherwise be barred by 21 Jac. 1, c. 16, s. 3, for that statute begins to run only from the date of the passing of the Act of 1882. *LOWE v. FOX* 15 Q. B. D. 667, 54 L. J. Q. B. 561.

[34 W. R. 144 (C.A.)]

6. — *Personal Actions—Acknowledgment.*

A letter from a debtor to his creditor contained the following expressions:—“I was in hopes of being able to send you some coin by small instalments, but as I have been ordered home, this matter must be in abeyance a little longer, which won't ruin you. I know you must live in hopes as I do, for a good time is rather long coming . . . I can assure you such behaviour would not induce me to put myself out to attempt to square off your account. I think you ought to know me by this time. When I have had the means, you have got luck.” *Held*, not a sufficient acknowledgment of a debt to take the case out of the Statute of Limitations. *JUPP v. POWELL* — 1 C. & E. 349

7. — *Personal Actions—Administration—Statutory Bar—23 & 24 Vict. c. 38, s. 13—“Dying intestate”—“Present right to receive”—Part payment.*] The operation of 23 & 24 Vict. c. 38, s. 13, is retrospective, so that the limitation of twenty years “next after a present right to receive the same shall have accrued” thereby imposed (in analogy to 3 & 4 Will. 4, c. 27, s. 40) upon claims to recover personal estate of “any person dying intestate, possessed by the legal personal representative of such intestate,” is not confined to the case of persons dying intestate after the 31st of December, 1860, the time fixed by the section for commencement of the operation of the enactment.

Accordingly a claim by next of kin for general administration of the estate of an intestate who died in 1848 was barred at the end of twenty-one years from that date; and leave to revive an administration suit relating to the same estate in which no proceeding had been taken since the decree in 1855 was refused.

But with respect to assets of the intestate not received by the administrator until 1870 (more than twenty years after the death, and within twenty years before the issue of the writ) the claim of the next of kin to administration, limited to such assets, was not barred; there being no “present right to receive” on the part of the next of kin until the assets had been actually recovered by the administrator.

Part payment by the administrator out of a particular asset which has so fallen in will not revive the right to sue for general administration which was at the time of payment barred by statute. So *held*, by Chitty, J. *Re JOHNSON. SLY v. BLAKE* — 29 Ch. D. 964, 52 L. T. 682.

[33 W. R. 502]

8. — *Personal Actions—Executor—Devastavit—Mortgagor and Mortgagee.*] A testator mortgaged leaseholds and died. His executors took possession of his estate, recovered the rents of the leaseholds, paid the interest on the mortgage, and, without providing for the mortgage



**LIMITATIONS, STATUTES OF—continued.**

debt, made certain payments to the beneficiaries under the will.

In the course of proceedings by the mortgagee for the realization of his security, and by a legatee for administration, the executor carried in an account in which he claimed credit for all payments made to the beneficiaries, on the ground that under the circumstances the mortgagee must be taken to have acquiesced in such payments; and further, that as to such of the said payments as were made upwards of six years before the action, any claim on a *devastavit* was barred after six years by the Statute of Limitations.

*Held*, by Kay, J., that there was no sufficient proof of acquiescence, and that the executors having acknowledged the mortgage debt by payment of interest, and being bound in equity by a trust properly to deal with the assets, could not set up their own wrong by way of *devastavit* as a defence in order to claim the benefit of the Statute of Limitations.

*In re Gale* (22 Ch. D. 820, 53 L. J. Ch. 694, 48 L. T. 101, 31 W. R. 538) considered. *Re MARSDEN. BOWDEN v. LAYLAND. GIBBS v. LAYLAND* 26 Ch. D. 783, 54 L. J. Ch. 640, 51 L. T. 417, [33 W. R. 28]

9. — *Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), s. 8—*Bond by Sureties for Payment of Mortgage Debt—Order LV., r. 10—Order for Administration at Suit of Creditor.* In 1867 T. P. mortgaged an estate to L. & A. for £1000, and at the same time E. P. and C. P. gave to L. & A. a joint and several bond in the penal sum of £400, reciting that the £1000 had been advanced at the request of E. P. and C. P., and that they had agreed to give as a better security for part thereof a bond conditioned for payment of £200 and interest. The bond was conditioned to be void if the mortgagor paid the mortgage money and interest according to his covenant. T. P. paid the interest till December, 1877, after which it fell into arrear, and in 1880 the mortgagees entered into possession. E. P. died in 1883 without having made any payment or given any acknowledgment. L. & A., as creditors under the bond, took out a summons for administration of his estate. E. P.'s representatives disputed the claim on the ground that this was a proceeding to recover money secured on land, and was barred by the lapse of twelve years under the Real Property Limitation Act, 1874. Bacon, V.C., without giving any opinion on this question, dismissed the summons under the discretion given by Order LV., rule 10, on the ground that a disputed debt ought not to be tried on summons:—*Held*, by the Court of Appeal, that as there were no facts in dispute, the Vice-Chancellor ought to have decided the question of law on the summons:—

*Held*, further, that this was not a proceeding to recover money secured on land, but to recover damages because another person failed to pay money secured on land, and that it did not come within the scope of the Real Property Limitation Act, 1874, s. 8:—

*Held*, further, that if remedy on the bond had been barrable by the lapse of twelve years under that section, the payments of interest by the mortgagor would have prevented the bar:—

**LIMITATIONS, STATUTES OF—continued.**

*Held*, therefore, that L. & A. were entitled to rank as creditors against the estate of E. P., and that if his representatives did not admit assets, an administration order must be made.

*Sutton v. Sutton* (22 Ch. D. 511, 52 L. J. Ch. 333, 48 L. T. 95, 31 W. R. 369), *Fearnside v. Flint* (22 Ch. D. 579, 52 L. J. Ch. 479, 48 L. T. 154, 31 W. R. 318), and *Cockrill v. Sparkes* (1 H. & C. 699) distinguished. *Re POWERS. LINDSELL v. PHILLIPS* - - - 30 Ch. D. 291 (C.A.)

10. — *Realty—Mortgage—Interest, Payment of—Agency.* The solicitor of a mortgagor paid the interest to the mortgagee, and it was taken into account between them up to 1866. From that time the solicitor continued to pay the interest, but there was no proof that he acted as agent for the mortgagor, or that the mortgagor furnished the money:—

*Held*, by North, J., in a foreclosure action brought in 1884, that there had been no sufficient payment of interest to take the case out of Statutes of Limitations, and that the action was barred. *NEWBOULD v. SMITH* 29 Ch. D. 882, 53 L. T. 137, [33 W. R. 690]

11. — *Realty—Annuity—3 & 4 Will. 4, c. 27, s. 40—37 & 38 Vict. c. 57, s. 8.* An annuity given by will and charged on all the testator's real and personal estate is within 37 & 38 Vict. c. 57, s. 8, and is barred by non-payment of the gales for twelve years. *DOWER v. DOWER* 15 L. R. Ir. 264

12. — *Tenant for Life and Remainderman—Joint and several Bond—Several Judgments—Appointment of Receiver over Estate of Tenant for Life.* A tenant for life and remainderman executed a joint and several bond, with warrant of attorney for confessing judgment thereon, and several judgments were entered up against them by the obligee of the bond. A receiver over the tenant for life's estate was extended to the judgment against the father (the tenant for life), and remained in receipt of the rents up to a period within twenty years of the present proceeding, but no payment was ever made on foot of the said judgment.

*Held*, by the Court of Appeal, that the extension of the receiver to the matter of the judgment did not prevent the Statute of Limitations from running in favour of the remainderman. *Mahon v. Davoren* (2 H. & B. 523) distinguished.

*Held*, also, by Ormsby, J. (the point not being argued in the Court of Appeal), that the claim on foot of the judgment was not taken out of the operation of the statute by the fact that a policy of insurance upon the life of the tenant for life had been assigned in trust for the judgment creditor as a collateral security, the premiums on which he paid, and that bonuses of substantial amount, but less than the amount of premiums paid at the accrual of such bonuses, were, at the election of the judgment creditor, added to the policy instead of being paid to him in cash. *Re GREENE'S ESTATE* [13 L. R. Ir. 461 (C.A.)]

13. — *Tithe Rent-Charge in Ireland—Non-payment for more than Twenty Years—Statute of Limitations* (3 & 4 Will. 4, c. 27), ss. 1, 2, 29—1 & 2 Vict. c. 109.] The right to tithe rent-charge in Ireland was vested in a spiritual corporation

**LIMITATIONS, STATUTES OF—continued.**

sole until 1871, when it was transferred by statute to a lay corporation. In 1877 the lay corporation brought an action against the persons liable to pay tithe rent-charge to recover six years' arrears. For more than twenty years next before action there had been no payment and no acknowledgment in writing:—

*Held*, affirming the decision of the Irish Court of Appeal, that tithe rent-charge was "rent" within sect. 1 of the Statute of Limitations (3 & 4 Will. 4, c. 27), and not a "composition" within the exception to sect. 1, compositions in Ireland having been abolished by 1 & 2 Vict. c. 109; that sect. 2 of 3 & 4 Will. 4, c. 27, applied as between the owner and the persons liable to tithe rent-charge; that the lay corporation could not avail themselves of the provisions of sect. 29 in favour of spiritual corporations sole; and that the action was barred by the lapse of twenty years. *IRISH LAND COMMISSION v. GRANT* - 10 App. Cas. 14, [52 L. T. 228, 33 W. R. 357, 13 L. R. Ir. 478 (H. L., I.)]

- Action for subsidence after compensation for previous subsidence.  
*See DAMAGES*. 9.
- Application to settle amount of compensation.  
*See LANDS CLAUSES ACT*. 3.
- Conviction for encroachment on highway.  
*See HIGHWAY*. 3.
- Express trust—Bequest to executor.  
*See WILL—EXECUTORS*. 2.
- Judgment—Garnishee order to pay six years after.  
*See PRACTICE—ATTACHMENT OF DEBTS*. 2.
- Notice of new building to district surveyor.  
*See METROPOLIS*. 10.
- Right of entry barred by—Purchase of "pre-tenched" title.  
*See VENDOR AND PURCHASER—TITLE*. 6.
- Solicitor's lien for costs—Debt barred by statute.  
*See SOLICITOR—LIEN*. 8.
- Title under—"Shewing" and "making" good title.  
*See VENDOR AND PURCHASER—TITLE*. 8.

**LIQUIDATION—Company.**

*See COMPANY—VOLUNTARY WINDING-UP.*  
*COMPANY—WINDING-UP.*

**LIQUIDATOR.**

*See COMPANY—LIQUIDATOR.*

**LIS PENDENS—Vacating Registration—Jurisdiction—Application by Person not a Party—30 & 31 Vict. c. 47, s. 2—Costs.]** Under the above section the Court has jurisdiction to make an order vacating the registration of a *lis pendens*, which has been improperly registered against a person not a party to the action, notwithstanding that the action is being *bonâ fide* prosecuted by the Plaintiff against the Defendant. *SCHOFIELD v. SOLOMON* [54 L. J. Ch. 1101, 52 L. T. 679, W. N. (1885) 104]

- Registration—Mortgage—Petition for sale.  
*See REGISTRY ACTS*.

**LOAN**—For specific purpose—Bankruptcy of borrower—Following money lent.  
*See TRUSTEE—DUTIES.*

**LOCAL BOARD.**

*See LOCAL GOVERNMENT:*  
*PUBLIC HEALTH ACTS.*

**LOCAL GOVERNMENT—New Building—Notice to Local Board—Wooden Building brought on Wheels.]** R. was charged under the W. Improvement Act with unlawfully erecting a new building without notice to the local board. The building was made of wood, thirty feet long and thirteen feet wide, and was brought along the street on wheels and put at the corner of a new street. It had spouts and a down corner, had a supply of gas, and was used as a butcher's shop.

*Held*, by Coleridge and Smith, JJ., that the justices were right in treating this as a new building, and subject to the ordinary requirements as to new buildings. *RICHARDSON v. BROWN*

[49 J. P. 661]

2. — *Nuisance caused by Rural Authority—Injunction against continuing—Dissolution of Rural Authority and constitution of Urban Authority over same District.* *TAYLOR v. FRIERN BARNET LOCAL BOARD* - W. N. (1885) 7

3. — *Penalties enforced by Borough Justices—Application under Local Act—Payment to Borough Fund—General Offences—Repeal of General Act by Local Act—Jervis's Act (11 & 12 Vict. c. 43), s. 31—43 & 44 Vict. c. cxlvii., s. 257.]* In the borough of O., a borough having a separate commission of the peace, it is provided by a local Act that any penalty recovered upon the information or complaint of any peace officer or constable within the borough is to be paid to the treasurer, and carried to the borough fund or to the police superannuation fund as the corporation may decide. In an action by the treasurer of the county of L. to enforce the provisions of sect. 31 of 11 & 12 Vict. c. 43, *Held*, by Grove, Manisty, and Lopes, JJ., that the effect of the provisions in the local Act was, so far as the borough of L. was concerned, to repeal the provisions of the general Act: and that penalties imposed by the borough justices for offences against the general law under statutes containing no directions as to the application of the penalties were payable to the treasurer of the borough.

*Alison v. Foyster* (W. N. 1871, p. 48) explained *ALISON v. CHARLESWORTH* - 49 J. P. 294

— *Public Health Acts.*

*See PUBLIC HEALTH ACTS.*

— *Towns Improvement Act—Street—Paving expenses.*

*See TOWNS IMPROVEMENT ACT.*

**LOCAL GOVERNMENT BOARD—Prohibition—Inquiry as to making provisional order.**  
*See PUBLIC HEALTH ACTS*. 6.

**LOG—Engineer's—Evidence—Damage action.**  
*See PRACTICE—ADMIRALTY*. 7.

**LONDON.**

*See METROPOLIS.*

**LONG TERM—Enlargement of—"Rent having" no money value,"**  
*See CONVEYANCING ACT.*

**LUGGAGE**—Railway passenger's.

See **RAILWAY COMPANY**. 8, 9.

**LUNATIC**—*Custody of—Lunatic Asylums Act, 1853 (16 & 17 Vict. c. 97), s. 68—Jurisdiction of Justices—Personal Examination by Justices of alleged Lunatic.*] In order to give two justices jurisdiction to make an order under s. 68 of the Lunatic Asylums Act, 1853, for the reception of a person into a lunatic asylum as a lunatic who is not a pauper, and not wandering at large, but who is not under proper care and control, it is not necessary that they should examine such person in the presence of the medical man whom they have called to their assistance, nor that the examination should be made with the knowledge of the alleged lunatic, so that he should have the opportunity of explaining, if he could, what might otherwise be signs of insanity. Though his examination must not be a sham, yet if it be made by the justices bona fide for the purpose of satisfying themselves of the sanity or insanity of the person examined, it is sufficient, and their order is not without jurisdiction because the examination lasted only four or five minutes, and was made at the door of the carriage in which the alleged lunatic was seated with his attendants preparatory to his being taken to the asylum:—*So held* by Sir James Hannen, and Lindley, L.J. (Lord Coleridge, C.J., dissenting):—*Held*, by Lord Coleridge, C.J., that where the person deemed to be a lunatic is examined by two justices at his place of abode or elsewhere, the 68th section requires that one of such two justices must already have had, as a condition precedent to the vesting of the jurisdiction of the justices, either an information upon oath, or private or personal knowledge of his own as to the insanity of such person. *REG. v. WHITFIELD AND THORNE (or HILLMAN v. WHITFIELD)* 15 Q. B. D. 122, 54 [L. J. M. C. 113, 53 L. T. 196, 49 J. P. 230, 820 (C.A.)]

2. — *Custody—Private Asylum—Order for Reception—Statement of Particulars—Order for Discharge*—8 & 9 Vict. c. 100, s. 72—16 & 17 Vict. c. 96, s. 4, Sched. A, Form 1.] The statement of particulars annexed to the order issued under 16 & 17 Vict. c. 96, s. 4, and Sched. A, Form 1, for the admission and detention of a patient in an asylum, forms part of such order; and such statement, if substantially accurate, will be in compliance with the Act.

Where an order for the discharge of a patient has been given under 8 & 9 Vict. c. 100, s. 72, by the person who signed the order for the reception of such patient, the proprietor of the asylum is bound to discharge the patient "forthwith," that is, as soon as practically possible under the circumstances. *LOWE v. FOX* - 15 Q. B. D. 667, [54 L. J. Q. B. 561, 34 W. R. 144 (C.A.)]

3. — *Inquiry when Lunacy commenced—Lunacy Regulation Act, 1862 (25 & 26 Vict. c. 86), s. 3.*] The Lunacy Regulation Act, 1862, s. 3, takes away the power existing under the Lunacy Regulation Act, 1853, s. 47, of directing an inquiry from what time an alleged lunatic has been of unsound mind.

Opinion expressed by James, L.J., in *In re Sotomaior* (L. R. 9 Ch. 677) dissented from. *Re DANBY, AN ALLEGED LUNATIC* 30 Ch. D. 320, [34 W. R. 125 (C.A.)]

**LUNATIC**—continued.

4. — *Inquisition—Alleged Lunatic—Order for Inquiry before Judge of the High Court—Lunacy Regulation Act, 1862 (25 & 26 Vict. c. 86), s. 4—8 & 9 Vict. c. 109, s. 19.*] When an issue is directed by an order in Lunacy to try the question of the insanity of an alleged lunatic before a Judge of the High Court of Justice under the Lunacy Regulation Act, 1862, s. 4, it is not necessary to commence the proceedings by a writ of summons, the order for the issue being sufficient to give jurisdiction to the Judge. *Re G. G. SCOTT* 27 Ch. D. 116, 54 L. J. Ch. 194, [51 L. T. 735, 32 W. R. 801 (C.A.)]

5. — *Maintenance—Pauper Lunatic—Expense of Maintenance—Right of Poor Law Guardians to recover against Estate of Lunatic after his Death—Lunatic Asylums Act, 1853 (16 & 17 Vict. c. 97), ss. 94, 104.*] A pauper lunatic having died seised of a small amount of real estate:—*Held*, by Bacon, V.C., that the amount of sums paid by guardians of the union to which the pauper was chargeable (though not in the union in which he died), in respect of his maintenance at a lunatic asylum, was a debt recoverable in a creditors' action against his personal and real representatives, though no steps to recover payment of expenses incurred in respect of such maintenance were taken by the guardians in the pauper's lifetime. *Re WEBSTER. GUARDIANS OF DERBY UNION v. SHARRATT* 27 Ch. D. 710, [54 L. J. Ch. 276, 51 L. T. 319]

6. — *Property—Lunacy Regulation Act, 1853 (16 & 17 Vict. c. 70), s. 118—Charge of Expenses of Improvements.*] A lunatic was tenant for life of the H. estate, and tenant in tail in possession of the D. estate. Expenses were incurred by the committee in improvements on both estates, but chiefly on the former:—*Held*, that there was no jurisdiction to charge the D. estate with the expenses incurred on the H. estate. *Re VAVASOUR (A LUNATIC)* - 29 Ch. 306, 53 L. T. 413 (C.A.)

7. — *Property—Sale of Share of Lunatic in Real Estate—Lunacy Regulation Act, 1853 (16 & 17 Vict. c. 70), ss. 116, 124.*] The 124th section of the Lunacy Regulation Act, 1853, does not give jurisdiction to authorize the committee of a lunatic to sell the lunatic's undivided share of land to the owner of the other shares. *Re WELD (A LUNATIC)* 28 Ch. D. 514, 52 L. T. 703, [33 W. R. 845 (C.A.)]

See also *Re WOOLHOUSE* 28 Ch. D. 515 n.

— *Custody*—8 & 9 Vict. c. 100—Double costs.

See **PRACTICE—COSTS**. 8.

— *Nullity of marriage by reason of insanity.*

See **HUSBAND AND WIFE—DIVORCE**. 4.

— *Property—Alimony—Assignment.*

See **PRACTICE—DIVORCE**. 1.

— *Property—Probate duty—Accumulations—Conversion.*

See **REVENUE**. 8.

— *Sale instead of partition—conversion—subsequent lunacy of beneficiary.*

See **PARTITION**. 3.

— *Trustee.*

See **TRUSTEE ACTS**. 3, 4.

**M.****MAGISTRATE.***See JUSTICES.***MAINTENANCE—Infant.***See INFANT. 4—7.*

— Lunatic—Pauper—Expenses.

*See LUNATIC. 5.***MAINTENANCE OF SUIT — Maliciously procuring bankruptcy.***See CHAMPERTY.*

**MALICIOUS PROSECUTION** — *Reasonable and probable cause — Absence of — Misdirection.*] A forged cheque had been presented at the Defendants' bank, and the Plaintiff, because he was supposed to be one C., who was suspected, was arrested by the police on the charge of uttering it, and was then positively identified by the bank cashier as the man to whom the money was paid. On an action for malicious prosecution, *Held*, by Grove, Manisty, and Lopes, JJ., that there was no evidence of the absence of reasonable and probable cause. *Held*, also, that though, when the Plaintiff set up an *alibi*, and denied that he was C., the Defendants found that evidence would be forthcoming which, if true, would establish these facts, it was no evidence of malice on the part of the Defendants that they did not withdraw from the prosecution till the Plaintiff had been thrice remanded.

*Held*, also, that it not being the duty of the Defendants to bring this evidence, which they doubted, before the magistrates, their not doing so was no evidence of malice. In the action it was not a question relevant to the issue whether the Plaintiff was in fact C., or whether he was in fact the guilty person. It was no evidence of malice on the part of the Defendants that they put witnesses into the box, who, as Defendants well knew, would assert their belief that the Plaintiff was guilty. *HARRISON v. NATIONAL PROVINCIAL BANK OF ENGLAND* - 49 J. P. 390

*See also FALSE IMPRISONMENT.*

**MANDAMUS—Prerogative—Company—Register.**] A prerogative writ of *mandamus* will not lie to compel a company to register as a holder of shares therein, a person to whom they have issued certificates in respect of such shares, where the company have issued prior certificates in respect of such shares to someone else, without clear proof that the person to whom the last certificates were issued has a better title than the person to whom the earlier ones were issued, even though the person holding the earlier certificates has not been entered in the company's register as the holder of such shares. When such writ is asked for, the company are not estopped from relying upon the actual facts. *REG. v. CHARNWOOD FOREST RAILWAY CO.* - 1 C. & E. 419

2. — *Rule in Nature of—Certiorari—Res judicata—Charge of Assault—Claim of Right—Jurisdiction of Magistrate—Certificate of Dismissal—11 & 12 Vict. c. 43, s. 14—11 & 12 Vict. c. 44, s. 5.*] A person making a *bonâ fide* claim of right to be present as one of the public in a law court at the hearing of a suit is not justified

**MANDAMUS—continued.**

in committing an assault on a police constable and an official who endeavour to remove him. Such a claim of right does not oust the jurisdiction of a magistrate who has to try the charges of assault, and he may refuse to admit evidence and to allow cross-examination in respect of the said claim. If a charge be dismissed, it is discretionary with the justice to grant or refuse a certificate of dismissal.

A prerogative writ of *mandamus* can only be moved for by counsel. *Quære*, whether a rule in the nature of a *mandamus* under 11 & 12 Vict. c. 44, s. 5, can be moved for in person.

When a Divisional Court have decided a point against an applicant on one application, they will not overrule or review that decision on a second application by him, which, though technically different from the first, raises the identical point again. *REG. v. STANBURY EARDLEY* 49 J. P. 551

— Pleading to return to—Return of unconditional compliance.

*See PRACTICE—MANDAMUS.*

— To justices.

*See JUSTICES. 4—7.*

**MANOR—Tenant—Presumed Grant—Feoffment—Licence to make encroachment—Allowing Building.**] By a private Act passed in 1739, the lord and freeholders of a manor were empowered to grant portions of the waste in the manner therein provided. Under the Act various pieces of the waste were inclosed, and in many cases a licence under the seals of the lord and a majority of the freeholders was given to the person inclosing the land to occupy it on payment of a small rent. Among others, D. occupied part of the waste, and was charged with varying sums as an encroachment rent, but no grant or licence for his occupation was produced in evidence. In 1811 there was an entry in the books of the manor that D. was to pay £4 10s. "now and in future," and this rent had since been paid by the occupier of the land. This piece of land was conveyed to a purchaser by lease and release as freehold land, and buildings were erected on it. It had afterwards been conveyed by feoffment, and had eventually come into the possession of S., the Defendant. The Defendant having claimed to be seised of the land in fee simple subject to the quit rent of £4 10s., this action was brought by the lord of the manor and the freeholders to recover the land:—

*Held*, affirming the decision of Denman, J. (*W. N.* (1883) 157), that the Defendant was tenant from year to year, and the Plaintiffs were entitled to recover.

*Held*, also, that the deed of feoffment had no tortious operation so as to pass the fee by wrong, and *Held*, that there had been no such conduct on the part of the Plaintiffs as disentitled them, under the principle of *Ramsden v. Dyson* (*L. R. 1 H. L.* 129, 14 *W. R.* 926) from recovering possession of the property. *WELLER v. STONE* [54 *L. J. Ch.* 497, 53 *L. T.* 361, 33 *W. R.* 491, [W. N. (1885) 13 (G.A.)]

*See also COPYHOLD.***MARINE INSURANCE.***See INSURANCE, MARINE.*

**MARITIME LAW.** See SHIP.

**MARKET**—*Disturbance*—*Charter, Force of—Waiver of Statutory Rights—Accommodation provided by Lord of Market.* A charter of 1st Edward III. made by the King "with the assent of the prelates, earls, barons, and all the commons of our realm assembled in our present Parliament," granted to the citizens of the city of London certain privileges, and among them that "no market within seven miles round about the city shall be granted by us or our heirs to any one." By letters patent in the 34th Charles II., reciting an inquisition founded on a writ of *ad quod damnum*, the King granted to the Respondents' predecessor in title the right of holding markets on Thursday and Saturday in every week in Spital Square, within the seven miles.

User of the market was proved since 1723. The Appellant company set up a dépôt or row of stalls at their terminus within 300 yards of Spital Square, and let them to dealers for the purpose of selling fruit and vegetables brought up by their railway, and justified their dépôt on the ground that the Respondents' market was very crowded, that it was difficult for dealers to get stalls there, and that if any persons other than the Respondents' tenants wished to sell in the Respondents' market there would be no room for them; and that the Respondents' market infringed the provisions of certain Paving Acts:—

*Held*, affirming the decision of the Court of Appeal (25 Ch. D. 511, 53 L. J. Ch. 371, 49 L. T. 717, 32 W. R. 341), that the charter of Edward III. had, at the most, the force of a private or personal statute, and concerned the corporation of London only and not the general public; that the consent of the corporation was to be presumed to the letters patent of Charles II.; that the letters patent of Charles II. conferred a valid right of market; that the company's dépôt was in fact a rival market, and a disturbance of the Respondents' right of market, and entitled the Respondents to an injunction to restrain the company from using their dépôt in the above manner or so as to interfere with the Respondents' rights; and that even if the company had proved that there was not sufficient accommodation in the Respondents' market, or that the Paving Acts had been infringed, those circumstances would have afforded no answer to the action for an injunction.

GREAT EASTERN RAILWAY CO. v. GOLDSMID  
[9 App. Cas. 927, 54 L. J. Ch. 162, 52 L. T. 270,  
[33 W. R. 81, 49 J. P. 260 (H. L., E.)]

2. — *Disturbance of—Market granted by Charter—Shop—Sales outside Shop.* HORNER v. FREEMAN — — — W. N. (1884) 223

3. — *Market not limited by Metes and Bounds—Extension of Market—Streets subject to Market Rights—Street Acts of Parliament not affecting Market—Usage—Presumption of lost Grant.* By letters patent in 34 Charles II. the King granted to the predecessor in title of those under whom the Defendant claimed as lessee the right to hold two markets—one on Thursday and the other on Saturday—in every week, "in or next to Spital Square." The market place and four inner streets connected therewith were made by the grantee on the square piece of land which had formerly been Spital Square, and which land

**MARKET**—*continued.*

he had acquired when the charter was granted to him, but he never acquired the adjoining land which surrounded such square piece, and on which, subsequently to the charter, were made certain outer streets, into which the four inner streets ran. By letters patent in 4 James II., made void by 2 Wm. & M. sess. 1, c. 8, a third market was given, viz., on Monday in every week, and a market on Wednesday substituted for that on Thursday. In proceedings taken at the instance of the local authority to restrain the Defendant from licensing the sale of goods in either the outer or the inner streets adjoining the market, the local authority relied on certain Paving Acts of Geo. 3, which empowered such authority to remove the obstruction caused by selling articles in those specific streets, and the Defendant proved a usage from the time of living memory to sell vegetables and fruit in any of those streets, and to pay toll to the market-owner for so doing, when by reason of the market being so crowded it was impossible to get nearer to the inside market, and he also proved such usage to hold the market on other days of the week besides on Thursday and Saturday:—*Held*, that the market was a market without metes and bounds, and might extend, therefore, from time to time, as the crowded state of the market might require, over any of the surrounding streets, all of which were to be presumed to have been dedicated to the public subject to the exercise of the market franchise, notwithstanding the Paving Acts, as such Acts were not to be construed as interfering with the market rights:—*Held*, also that the right to hold the market was confined to the two days mentioned in the charter of Charles II., and that under the particular circumstances of the case a lost grant for the other days of the week was not to be inferred. ATTORNEY-GENERAL v. HORNER 14 Q. B. D. 245, 54 L. J. Q. B. 227, [33 W. R. 93, 49 J. P. 326 (C.A.)]

[Affirmed by H. L., W. N. (1885), 222.]

4. — *Selling within limits—Provisions—Potatoes.* The T. Market Act prohibited the selling within certain limits of the market, corn, grain, fish, meat, poultry, or other provisions, or any bulls, sheep, swine, or other live cattle which are usually sold in public markets.

*Held*, by Hawkins and Smith, JJ., that a shop-keeper selling potatoes came within the statute, these being "provisions," and also "usually sold within markets." SHEPHERD v. FOLLAND [49 J. P. 165]

— Approaches to—District Board of Works.

See METROPOLIS. 4.

**MARRIAGE SETTLEMENT.**

See SETTLEMENT.

**MARRIED WOMAN.**

See HUSBAND AND WIFE.

**MARRIED WOMEN'S PROPERTY ACTS.**

See HUSBAND AND WIFE — MARRIED WOMEN'S PROPERTY ACTS.

**MARSHALLING**—Charitable bequests.

See CHARITY. 4, 10.

— Debts and Legacies—Charge—Mortmain—Lapsed bequest.

See EXECUTOR—ADMINISTRATION. 6.

**MARSHALLING**—*continued.*

— Proceeds of sale—Auctioneer's lien.  
See AUCTIONEER.

**MASTER**—Report of—Whether conclusive.  
See SOLICITOR—UNQUALIFIED. 1.

**MASTER AND SERVANT**—*Common Employment*

—*Direct Employment by Sub-contractors.*] A., a labourer in the employment of a firm who had contracted to lay the cement flooring of a building in course of erection, was injured by a hammer let fall through a skylight in the roof, as alleged, by the fault of B., a workman in the employment of C., who had undertaken to execute the plumber work of the same building. *Held*, that C. was not responsible to A. for B.'s fault, A. and B. being engaged in a common work. *MAGUIRE v. RUSSELL* 12 C. of S. Cas. 1071 (Sc.)

2. — *Common Employment — Independent Contractor.*] A servant in the ordinary employment of the C. Ry. Co. brought an action for damages against a firm of slaters, averring that he, while engaged in storing sleepers in a shed belonging to the company, had been injured by the fault of a servant in the employment of the Defendants, who were repairing the roof of the shed under contract. *Held*, that these averments did not shew that the Plaintiff and the Defendants' servant were engaged in a common work, and that the action was maintainable. *GORMAN v. MORRISON* - - 12 C. of S. Cas. 1073 (Sc.)

3. — *Common Employment — Liability of Master for fault of Servant.*] An apprentice to a firm of mining engineers, engaged in making a survey of a pit, was severely burnt by an explosion of fire-damp. He was accompanied by the foreman and the fireman in the employment of the lessees of the pit. Each of the party had a naked light, and the explosion was caused by the fault of the fireman in going with a naked light into a part of the workings that had been for some time disused. The survey was made in terms of the lease of the pit to shew the workings, at the joint expense of landlord and tenant. In an action of damages brought by the apprentice against the lessees of the pit: *Held*, that as the Plaintiff had entered the mine under a contract of employment, he must be held to have undertaken all risks incidental thereto without claim for compensation except against those personally in fault, and that the Defendants therefore were not responsible to the Plaintiff for the fault of the fireman in carrying a naked lamp. *WINGATE v. MONKLAND IRON CO.* 12 C. of S. Cas. 91 (Sc.)

4. — *Common Employment — Brakeman working switch for his train on one line in a railway yard, injured by negligence of engineman of another train of same company on adjacent line.* *RANDALL v. B. & O. RY. CO.* 109 U.S. 478 (U.S.)

5. — *Common Employment—Guard of railway train held not to bear relation of fellow servant to engineer and other servants of company.* *CHICAGO, &c., RY. CO. v. ROSS* [112 U.S. 377 (U.S.)]

6. — *Common Employment — Injury to servant of a company through negligence of its*

**MASTER AND SERVANT**—*continued.*

general superintendent. *WILSON v. WILLIMANTIC LINEN CO.* - - 47 Amer. R. 653 (U.S.)

See also ATLANTA COTTON FACTORY CO. v. SPEER [id. 750]

7. — *Common Employment — Servant of railway Co. injured whilst travelling home from his work in one of Co.'s trains, free of charge.* *VICK v. NEW YORK CENTRAL RY. CO.*

[49 Amer. R. 36 (U.S.)]

8. — *Master's Liability—Assault by Servant —Scope of Employment.*] *Held*, by Coleridge, C.J., and Smith, J., that an assault committed by a waterworks company's broker's assistant when levying a distress for water-rate, did not render either the company or the broker liable to damages, it not being within the scope of the man's employment to commit an assault. *RICHARDS v. WEST MIDDLESEX WATERWORKS CO.* [15 Q. B. D. 660, 54 L. J. Q. B. 551, 33 W. R. 902, [49 J. P. 631]

9. — *Master's Liability — Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), ss. 1 (i), 2 (i) — Injury "caused" to a workman — Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1.]* Where a waggon was in a defective state, of which a workman was aware, and he used it in such a way as to cause injury to himself, when he knew how to use, and might have used it so as not to cause injury to himself, he cannot recover under the above sections of the Employers and Workmen Act, 1875. So held by Mathew and Day, J.J. *MARTIN v. CONNAH'S QUAY ALKALI CO.* - - - 33 W. R. 216

10. — *Master's Liability — Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, sub-s. 3—Injury resulting to Workman from having conformed to Orders or Directions of Fellow Workman.*] The 1st section of the Employers' Liability Act, 1880, provides that where personal injury is caused to a workman (3) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed, the workman or, in case the injury results in death, his legal personal representatives, shall have the same right of compensation against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work. The Plaintiff, a boy employed by the defendants, a railway company, was assisting a carman of the Defendants, under whose directions he was, in unloading from a van three large iron window frames. The frames were standing upright in the van, secured at each end to the hoops of the van by a string. The carman untied the string at one end of the frames, and the Plaintiff untied the string at the other end. The carman did not expressly order the Plaintiff to untie the string, but the Plaintiff stated that he did so without orders because he had done so on previous occasions, and that the carman saw him untie the string and made no objection. The carman then removed one of the frames without retying the two remaining frames, leaving them standing unsecured. They directly afterwards fell on the Plaintiff, causing him injuries in respect of which he sued the Defendants for compensation

**MASTER AND SERVANT—continued.**

under the Employers' Liability Act, 1880:—*Held*, that there was on the above facts evidence of an injury to the Plaintiff by reason of the negligence of a fellow workman to whose orders he was bound to conform, and did conform, and which resulted from his having so conformed. *MILLWARD (or MILWARD) v. MIDLAND RAILWAY COMPANY* - 14 Q. B. D. 68, 54 L. J. Q. B. 202, [52 L. T. 255, 33 W. R. 366, 49 J. P. 453]

11. — *Master's Liability—Employers' Liability Act 1880 (43 & 44 Vict. c. 42), s. 1 (3).* In an action by a workman against his employer under the above Act, it was proved that a rivetting machineman in the employers' works was engaged at a rivetting job on a furnace along with three other workmen (including the Plaintiff) who had about one-third less wages than the machineman; that the machineman gave the others directions as to what they were to do, but that he could only enforce these directions by an appeal to the foreman of the works; that he told the Plaintiff to enter the furnace at which they were working to do some work inside; the furnace being raised off the ground to admit the Plaintiff; that after the Plaintiff had completed the work the machineman gave the signal for the furnace to be again raised, and the Plaintiff, without receiving an express direction from the machineman to do so, began to come out, but as he was coming out, the chain, by means of which the furnace was suspended, broke, and the furnace fell on his foot and injured it. The chain was admittedly insufficient for the work, and had been negligently chosen by the machineman, and it was also admitted that wooden blocks should have been placed below the furnace when raised to make it more secure. *Held*, that the machineman was a person to whose orders or directions the other workmen were "bound to conform," that the injury to the Plaintiff had resulted from his having conformed to such an order, and therefore he was entitled to damages from his employers. *DOLAN v. ANDERSON*

[12 C. of S. Cas. 804 (Sc.)]

12. — *Master's Liability—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42)—Liability of Coalmaster for injury to servant of Contractor.* A coalmaster contracted with pit-sinkers to sink a shaft in his colliery to a lower seam of coal, the pit-sinkers becoming bound, *inter alia*, to put in the necessary propping or supports, which the coalmaster was bound to and did sufficiently supply, at the sides of the shaft. The pit-sinkers for the purpose of carrying out this contract engaged a number of workmen, whose wages they paid, who were under their sole control, and who did not sign the colliery rules. The coalmaster and his manager did not superintend the operation. One of the workmen having been killed when engaged in sinking the pit through the falling in of its sides, which had been insufficiently propped, his representatives brought an action against the coalmaster claiming damages at common law and under the above Act, and pleading that the Defendant was in fault in not having by himself or by his manager superintended the propping of the shaft. *Held*, that as the deceased had not been in the employment of the

**MASTER AND SERVANT—continued.**

Defendant, and as there was no duty to the deceased incumbent on the Defendant which he had failed to perform, the Defendant was not liable in damages. *ROBERTSON v. RUSSELL* 12 C. of S.

[Cas. 634 (Sc.)]

13. — *Master's Liability—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), ss. 4, 7—Notice, sufficiency of.* The wife of a workman who had been injured wrote to his employer as follows:—"I find I will need some more money, and will you please oblige me with ten shillings. It is now five weeks since Adam got his accident. His jaw is so badly smashed that he will never be the same man agin. Adam has been advised to get damages from you." *Held*, that this letter was to be taken as a notice under the Act, and that, having regard to the proviso at the end of s. 7, it was sufficiently specific to allow the Plaintiff to go to trial. *THOMSON v. ROBERTSON*

[12 C. of S. Cas. 121 (Sc.)]

14. — *Master's Liability—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 6—Removal of Action into Superior Court—Special grounds—Serious personal injuries—Damages exceeding £50—Conditional order—Showing cause.* An action to recover damages for personal injuries occasioned through the negligence of a fellow-servant of the Plaintiff having been brought in the County Court, under the Employers' Liability Act, 1880, the Plaintiff obtained a conditional order to have it removed into a Superior Court. The Plaintiff's wages were £60 a year, and he claimed £180 damages. There was medical evidence shewing that he had sustained serious and permanent injury, and it was admitted that more than £50 might reasonably be awarded; but there were not any other special circumstances shewn in support of the application:—

*Held* (1), that the County Court would have power to award damages exceeding £50, and for any amount within the statutory limit of three years' wages.

(2) *Per* Dowse, B., *diss.* Andrews, J., that no sufficient grounds were shewn for the removal of the action from the County Court.

In such cases, where a conditional order is made, the opposite party should merely file an affidavit as cause, leaving the party who has obtained the conditional order to serve notice (if so advised) to make it absolute. *McEvoy v. WATERFORD STEAMSHIP CO.* - 16 L. R. Ir. 291

15. — *Master's Liability—Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 6—County Court—Action of Tort—Stay of Proceedings (19 & 20 Vict. c. 108), s. 39.* Sect. 39 of the County Courts Act, 1856, entitles the Defendant "in any action of tort" where the claim exceeds £5 to a stay of proceedings upon certain conditions as to giving security for the amount claimed, and the costs of trial in one of the superior courts of common law:—*Held*, affirming the decision of Mathew and Smith, J.J. (14 Q. B. D. 818, 54 L. J. Q. B. 301, 33 W. R. 521, 49 J. P. 407), that this section was intended to apply only to actions which could be brought either in one of the superior courts or in a county court, and therefore did not apply to an action under the Employers' Liability Act, 1880, which by s. 6 of that

**MASTER AND SERVANT—continued.**

Act must be brought in a county court. *REG. v. JUDGE OF CITY OF LONDON COURT. CLAXTON v. LUCAS AND AIRD* - 14 Q. B. D. 905.

[54 L. J. Q. B. 330, 52 L. T. 537, 33 W. R. 700]

16. — *Master's Liability—Girl under fourteen employed in Factory—Factory Act, 1878* (41 Vict. c. 16), ss. 11, 12, 26, 96.] A girl within a few days of fourteen years of age was employed as a full-timer in contravention of the above Act, at a carding-machine in a factory. Among her duties was that of keeping the machine clean from tow, which was apt to collect on it, and she had the power of stopping the machine for this purpose. She was directed not to touch the machine while it was in motion. In contravention of this direction she attempted to clean it without having stopped it; her arm was in consequence caught in the machinery and was seriously injured. In an action of damages by the girl against her employers:—*Held*, that the Defendants were in fault in employing the Plaintiff at work, which, looking to her age, must on the evidence be regarded as of a dangerous character, that a plea of contributory negligence was ill-founded, and, therefore, that the Defendants were liable in damages. *SHARP v. PATH-HEAD SPINNING CO.* - 12 C. of S. Cas. 574 (Sc.)

17. — *Master's Liability—Improper use of machine—Latent Defect.*] The contractor for the removal of a disused line of railway made use of a travelling crane to tear up the rails with the sleepers attached. When this operation had gone on for about a month, the jib of the crane suddenly fell, owing to the breaking of the pivot on which the crane rested, and in falling killed one of the workmen employed at the windlass. After the accident a latent defect was discovered in the pivot. The widow of the deceased workman having brought an action of damages against the contractor:—*Held* (*diss.* Lord Rutherford Clark), that the use to which the crane had been put was an improper use, that it had not been satisfactorily proved by the contractor that the accident was due to the latent defect, and that therefore he was liable in damages to the Plaintiff. *WELSH v. MOIR* - 12 C. of S. Cas. 590 (Sc.)

18. — *Master's Liability—Negligence of Servant hired to drive Cart, Liability of Hirer for.*] D. contracted with the Defendants, an urban authority, to supply by the day a driver and horse to drive and draw a watering cart belonging to the Defendants. The driver was employed and paid by D., and was not under the Defendants' direction or control otherwise than that their inspector directed him what streets to water. In an action to recover damages for injuries caused by the negligent conduct of the driver whilst in charge of the cart:—*Held*, by Grove and Manisty, JJ., that the Defendants were not liable. *Quarman v. Burnett* (6 M. & W. 499) followed; *Rourke v. White Moss Colliery Co.* (2 C. P. D. 205) distinguished. *JONES v. CORPORATION OF LIVERPOOL* - 14 Q. B. D. 890.

[54 L. J. Q. B. 345, 33 W. R. 551, 49 J. P. 311]

19. — *Master's Liability—Negligence of servant—Course of employment—Damage to property caused by fire kindled by employees of railway for purpose of cooking their meals, whilst*

**MASTER AND SERVANT—continued.**

engaged in repairing the line. *MORIER v. ST. PAUL, & C., RAILWAY CO.* - 47 Amer. R. 793  
See also *MULVEHILL v. BATES* Id. 796

20. — *Master's Liability—Negligence—Scope of Employment—Implied Authority—Negligent driving—Evidence.*] In an action for injuries sustained through the negligent driving of one of the Defendant's servants, the only question being whether the Defendant was responsible for such negligence, it appeared that the Defendant was the proprietor of an hotel and shop in the town of C., and kept a pony and chaise for his own personal use. They were not used for the purpose of the Defendant's business. The accident which occasioned the injuries occurred during the temporary absence of the Defendant, who had left a servant, E., in charge of the shop only, with authority to sell goods, and generally to see that things went on right in his absence. The Defendant gave E. no authority to drive. Another servant named M. was in charge of the yard, and it was also his duty to drive when Defendant required. A housekeeper had charge of the house. While the Defendant was so absent, one of his relatives, Q., who admittedly had no authority to act as his agent, called at the house, and when leaving, E., at Q.'s request, drove Q. in the pony chaise to the neighbouring railway station. When E. was driving the pony and chaise back from the station the accident took place:—

*Held*, that there was no evidence proper to be submitted to the jury that E. was at the time of the accident acting in the course of his employment as the Defendant's servant. *WILSON v. OWENS* 16 L. R. Ir. 225 (since affirmed by C.A.)

21. — *Master's Liability—Tortious act of Servant—Tramway Co.—Authority of Servant to Arrest—Tramways Act, 1870* (33 & 34 Vict. c. 78), ss. 51, 52.] The Plaintiff was a passenger in one of the Defendants' trams, and tendered to the conductor, in payment of fare, a half-sovereign, which the conductor supposed to be counterfeit, and he therefore gave the Plaintiff in charge to the police. The Plaintiff having brought an action for false imprisonment against the tramway company:—*Held*, by Stephen, J., on further consideration, that the Defendants were liable. *FURLONG v. SOUTH LONDON TRAMWAYS CO.*

[48 J. P. 329, 1 C. & E. 316]

— *Master's liability—Fraudulent representation by servant.*

See *SALE OF GOODS*. 4.

**MASTER OF SHIP.**

See *SHIP—MASTER*.

**MAXIM**—"Actio personalis moritur cum personâ."

See *ARBITRATION*. 1.

— "Interest reipublicæ ut sit finis litium."

See *JUDGMENT*. 2.

— "Nemo debet bis vexari pro unâ et eâdem causâ."

See *JUDGMENT*. 2, 3.

— "Qui prior est tempore potior est jure."

See *COMPANY—SHARES*. 4.

**MAYOR'S COURT—Jurisdiction—Prohibition—Mayor's Court Procedure Act** (20 & 21 Vict. c.



**MAYOR'S COURT—continued.**

*clvit.*), s. 12—Cause of Action arising wholly or in part within the City of London or Liberties thereof.] The terms of a sale of the lease, goodwill, and fixtures of a business carried on in Surrey having been agreed upon orally, two counterpart documents were drawn up, embodying such terms. One of these was signed by the purchaser at Bow in the county of Middlesex. The other was subsequently signed by the vendor in the city of London. The two documents were then exchanged between the parties, and the deposit was paid at the office of the purchaser's solicitor in the city of London. The sum of £50, part of the purchase-money, being unpaid, the vendor sued for the same in the Mayor's Court:—*Held*, by Grove & Smith, J.J., that the cause of action did not in part arise within the jurisdiction of the Mayor's Court, and that therefore a writ of prohibition must issue. *ALDEBTON v. AROHER* [14 Q. B. D. 1, 54 L. J. Q. B. 12, 51 L. T. 661, [33 W. R. 136]

**MEASURE OF DAMAGES.**

See DAMAGES.

**MEAT**—Unwholesome—Evidence as to state of. See PUBLIC HEALTH ACTS. 18.

**MEDICAL PRACTITIONER—Unqualified Person**—Right to sue—*Apothecaries Act* (55 Geo. 3, c. 194), s. 14—*Medical Act*, 1858 (21 & 22 Vict. c. 90), ss. 32, 40.] The Act 55 Geo. 3, c. 194, prohibiting medical practice by unqualified persons, is not repealed by implication by the Medical Act, 1858.

The Defendant, a duly qualified medical practitioner, agreed with the Plaintiff, a medical practitioner not duly qualified, but who was described in the agreement as "medical practitioner," to serve the Plaintiff as assistant in his profession as a medical practitioner, and not to practise at R. within five years after the close of the engagement. The Plaintiff applied for an injunction to prevent the Defendant from practising at R. in breach of this agreement:—*Held*, by Pearson, J. (52 L. T. 472, 49 J. P. 536), that the Medical Act of 1858 does not prohibit unqualified persons from practising medicine, its object being only to enable the public to distinguish between qualified and unqualified practitioners—that the use by an unqualified person in a private agreement with another medical man, of any of the titles for the wilful use of which by an unqualified person for the purpose of deceiving the public, penalties are imposed by sect. 40 of the Act, is not an offence within that section—that the agreement therefore was not illegal, and that the Plaintiff could enforce its terms, and was entitled to an injunction.

The Defendant appealed, and on appeal shewed that the Plaintiff had given various certificates of cause of death, which shewed that the Plaintiff had attended the deceased persons during their last illness, and from which it was to be inferred that he attended patients in the way in which a medical practitioner ordinarily attends, and in fact personally acted as an apothecary:—

*Held*, that his doing so was made illegal by the Act 55 Geo. 3, c. 194, s. 14, that the agreement therefore was to assist the Plaintiff in carrying on a business which he could not lawfully

**MEDICAL PRACTITIONER—continued.**

carry on, and that the agreement was illegal and could not be enforced.

*Semble*, if the Plaintiff had carried on his business by means of duly qualified assistants, without personally acting as a physician, surgeon, or apothecary, the agreement might have been legal. *DAVIES v. MAKUNA* 29 Ch. D. 596, 54 L. J. Ch. 1148, [52 L. T. 472, 53 L. T. 314, 33 W. R. 668, [49 J. P. 536, 50 J. P. 5 (C.A.)]

**MEETING**—Company—Special resolution—Time—Interval.

See COMPANY—MANAGEMENT.

**MEMORANDUM OF ASSOCIATION.**

See COMPANY—MEMORANDUM.

**MENS REA**—Tramway engine—Emission of steam—Driver's liability.

See TRAMWAYS ACT.

**MERCHANT SHIPPING ACTS.**

See SHIP—MERCHANT SHIPPING ACTS.

**METROPOLIS—Commissioners of Sewers—Power to take Land**—57 Geo. 3, c. xxix.—*Right of Pre-emption*—14 & 15 Vict. c. xci., s. 54.] Two houses adjoining Wood Street, in the city of London, having been destroyed by fire, the outer walls only being left standing, the Commissioners of Sewers adjudicated that it was desirable to widen Wood Street, and that the two houses, and the land on which they stood, projected into and prevented them from widening the street, and that the possession and purchase of those houses was necessary for that purpose, and they directed their solicitor to treat for the purchase. Notice to treat was accordingly given for the whole of the houses. The owners brought their action for an injunction to restrain the Commissioners from proceeding on this notice. It was admitted by the Commissioners that they only meant to use a strip of 5½ feet in breadth for widening the street, and intended to sell the rest without giving the Plaintiffs any option of pre-emption:—

*Held*, by Kay, J., and by the Court of Appeal, that the Plaintiffs were entitled to an injunction, for that the adjudication was *ultra vires*, the Commissioners having no power to adjudicate that the possession of the whole of the piece of land is necessary for the purpose of improvements when they only intend to use a small part of it for that purpose, though if they made such an adjudication in the belief that they should require the whole for the improvements, the correctness of the adjudication could not be questioned.

If a part of a piece of land prevents an improvement, the Commissioners have power to take part compulsorily, their power of proceeding compulsorily not being limited to taking the whole.

Whether the Commissioners, if they only want a part of the site of an existing house for the purpose of an improvement, can adjudicate that the possession and purchase of the whole house are necessary, *quære*.

*Thomas v. Davo* (L. R. 2 Ch. 1, 36 L. J. Ch. 201, 15 L. T. 200, 15 W. R. 113) considered.

By Kay, J., *semble*, that the right of pre-emption given by 57 Geo. 3, c. xxix, s. 96, is not taken away by the City of London Sewers Act, 1851 (14 & 15 Vict. c. xci.), s. 54. *GARD v. COMMISSIONERS OF SEWERS OF THE CITY OF LONDON* 28 Ch. D. 486, [54 L. J. Ch. 698, 52 L. T. 827]

**METROPOLIS—continued.**

2. — *Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 6—*Vestryman—Qualification of—Rating—Occupation.*] By the *Metropolis Local Management Act, 1855*, s. 6, "the vestry elected under this Act in any parish shall consist of persons rated or assessed to the relief of the poor upon a rental of not less than £40 per annum; and no person shall be capable of acting or being elected as one of such vestry for any parish, unless he be the occupier of a house, lands, tenements, or hereditaments in such parish, and be rated or assessed as aforesaid upon such rental as aforesaid within such parish":—*Held*, by Lopes, J., that to be qualified as a vestryman under the Act a person must be the occupier of real property in the parish, and be himself rated or assessed in respect of such occupation to the required amount. *MOGG v. CLARK* 15 Q. B. D. 82, [54 L. J. Q. B. 334]

[Affirmed by C. A., 16 Q. B. D. 79, 55 L. J. Q. B. 69, 34 W. R. 66.]

3. — *Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), ss. 52, 53, 112—*New Street—Disturnpiked Road—Expenses of Sewer laid in—Sewers Rates previously levied on adjoining lands—Liability of adjoining owners.*] The H. Vestry constructed a sewer in a disturnpiked road within the metropolis, and apportioned the expense of making such sewer on the owners of the lands adjoining the road. The Defendant was owner of lands adjoining the road, which were laid out as building lands, but were not built upon, and was also owner of the soil of a road across his lands, which he had dedicated to the public, and which opened into the disturnpiked road at right angles. In an action to recover the amount of the expenses apportioned upon the Defendant:—*Held*, by Pollock, B., and Manisty, J., that he was not liable in respect of so much of the expenses as were apportioned in respect of the frontage of the road dedicated by him to the public; but that he was liable in respect of the remainder of the apportionment as owner of land abutting on a new street within s. 52 (as defined by s. 112) of the above Act. *ST. JOHN'S, HAMPTSTEAD, VESTRY v. COTTON* - - - 49 J. P. 567

[Reversed by C.A., see W. N. (1885) 221.]

4. — *Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), ss. 91, 108—*Market—Approaches to—District Board of Works—Market Rights.*] A District Board of Works having given notice that they purposed (under s. 108 of the above Act) placing permanent posts on the sides of the footways and carriageways leading into, and forming part of the area of, a market, the Plaintiff, lessee of the market, brought an action against the Board, claiming an injunction:—*Held*, at the trial, by Bacon, V.C., that, as the Plaintiff had established market rights over the entrance streets, which would be interfered with by the posts, and as s. 91 of the Act excepts market rights from its operation, the Board must be restrained from putting up posts in the entrance streets. *HORNER v. WHITECHAPEL DISTRICT BOARD OF WORKS* 54 L. J. Ch. 143, 51 L. T. 414

5. — *Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 96—"Street"—*Telephone wire extending across—Telegraph Acts, 1863* (26

**METROPOLIS—continued.**

& 27 Vict. c. 112), ss. 2, 3, 12: 1868 (31 & 32 Vict. c. 110), s. 2: 1869 (32 & 33 Vict. c. 73), ss. 2, 3.] The *Metropolis Management Act, 1855*, does not by s. 96 confer upon a vestry or a board of works (constituted under that statute) such a property in the streets situate within their district, as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, the telephone wire being erected at a great height and causing no appreciable danger to the public or to the traffic in the street. *COVERDALE v. CHARLTON* (4 Q. B. D. 104, 48 L. J. Q. B. 128, 40 L. T. 88, 27 W. R. 258) and *ROLLS v. ST. GEORGE'S VESTRY* (14 Ch. D. 785, 49 L. J. Ch. 691, 43 L. T. 140, 28 W. R. 867) considered.

Notwithstanding the *Telegraph Act, 1869*, s. 3, a telephone company registered under the *Companies Act, 1862*, and not incorporated under any special Act, does not fall within the phrase, "the company," used in the *Telegraph Act, 1863*, and therefore is not forbidden by s. 12 of the last-named Act to erect its wires across a street, unless the consent of the body having the control of the street is obtained. *WANDSWORTH BOARD OF WORKS v. UNITED TELEPHONE CO.* 13 Q. B. D. 904, [53 L. J. Q. B. 449, 51 L. T. 143, 32 W. R. 776, [48 J. P. 676 (C.A.)]

6. — *Metropolis Management Act, 1855—Order of Board to Overseers to levy Rate—Sealing—Issue of Order—18 & 19 Vict. c. 120*, ss. 158–161.] By the *Metropolis Management Act, 1855*, s. 158, every vestry and district board shall from time to time "by order under their seal require" the overseers of their parish to levy the sums which such vestry or board may require for defraying the expenses of the execution of the Act.—By s. 161 the overseers "to whom any such order as aforesaid is issued shall levy the amount mentioned therein according to the exigency thereof":—*Held* (per Stephen and Mathew, JJ., Day, J., dissenting), that such an order became effective when sealed, and service of it on the overseers was not necessary to authorize them to levy rates, but that rates made by overseers in pursuance of such order, after notice of it having been sealed, were valid. *GLEN v. OVERSEERS OF FULHAM* - - - 14 Q. B. D. 328, 54 L. J. M. C. 9, [51 L. T. 856, 33 W. R. 165, 49 J. P. 519]

7. — *Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), ss. 78, 250—*Metropolis Management Amendment Act, 1862* (25 & 26 Vict. c. 102), s. 112—*New Street—Pavement—Power to make Branch Drains to Sewer.*] A builder made drains from certain houses in a road to the boundary of the forecourts of the houses. The road was what is known as a builder's road, made and coated with gravel and ballasted. The footpaths were made with gravel and kerbed with granite. The houses on either side of the road were not completed and inhabited, but the road was open for carriages and foot-passengers. It was lighted by the parish, but had not been taken to as a public road. The vestry made branches from the drains into a sewer which belonged to them and ran along the centre of the road, and for that purpose they opened the road and footway. The builder declined to repay to the vestry the expenses in-

**METROPOLIS—continued.**

curring thereby:—*Held*, by Coleridge, C.J., and Mathew, J. (1) that the road was not the less a street within the definition in s. 250 of the Metropolis Management Act, 1855, and s. 112 of the Metropolis Management Act, 1862, because it came within the definition of a new street in the last-mentioned section; (2) that s. 78 of the Metropolis Management Act, 1855, which authorizes the opening of the pavement of any street for the purpose of branching private drains into a sewer, applies equally to streets and to new streets; (3) that, looking to the definition of the word "pave" in s. 112 of the Metropolis Management Act, 1862, the road was paved:—That, consequently, the vestry had opened a part of the pavement of a street and were entitled under s. 78 of the Metropolis Management Act, 1855, to recover the expenses incurred by them. *HAMPSTEAD (ST. JOHN'S) VESTRY v. HOOPEL* - 15 Q. B. D. 652, [54 L. J. M. C. 147, 33 W. R. 903, 49 J. P. 741]

8. — *Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), ss. 74, 75—*General Line of Buildings—House built on Vacant Land—House at Corner of Two Streets—Order of Magistrate—Reduction into Writing—Time of Service.* The Plaintiff purchased a large piece of land abutting on a highway called the K. Road, on which were standing a public-house and several other houses fronting the highway. He pulled down the house, and made a new street through the piece of land, running into the K. Road at right angles with it, which he called D. Gardens, and sold portions of the land on each side of the new street to a builder. The builder erected a row of houses in D. Gardens, and the superintending architect of the Metropolitan Board certified the general line of buildings in D. Gardens.

The Plaintiff built a row of houses fronting the K. Road, one of which was at the corner of the K. Road and D. Gardens. The side of the corner house abutting on D. Gardens projected beyond the general line of buildings in D. Gardens. The house was not built on the site of any one of the old houses in the K. Road, but on the site of part of the garden of the public-house. A magistrate's order having been obtained by the vestry for the removal of the projecting part of the corner house, the Plaintiff brought an action to restrain the vestry from interfering with his house:—

*Held*, reversing the decision of Bacon, V.C. (53 L. J. Ch. 38, 48 L. T. 348, 31 W. R. 514, 1883 Dig. col. 234), (1) that the general line of buildings in D. Gardens extended to the K. Road; (2) that the projecting part of the corner house was a new building and came within sect. 75 of the Metropolis Management Amendment Act, 1862, and not within sect. 74, which applies to existing buildings; and (3) that although the corner house formed part of a row in K. Road it was also in D. Gardens, and the owner was bound to keep it within the general line of buildings of D. Gardens. The action was therefore dismissed.

*Auckland v. Westminster Board of Works* (L. R. 7 Ch. 597, 41 L. J. Ch. 723, 26 L. T. 961, 20 W. R. 845) distinguished.

An order was made by a magistrate under sect. 75 of the Metropolitan Management Amend-

**METROPOLIS—continued.**

ment Act, 1862, for pulling down the projecting part of a building within eight weeks. The order was made in the presence of the owner who was summoned, but was not reduced into writing and served on him till the day on which the eight weeks expired:—

*Held*, that the order was binding; the Act being silent as to service of the order on the owner, although it requires to be in writing. *BARLOW v. KENSINGTON VESTRY* 27 Ch. D. 362, [53 L. J. Ch. 899, 52 L. T. 155, 32 W. R. 966 (C.A.)]

9. — *Metropolis Management Amendment Act, 1862* (25 & 26 Vict. c. 102), s. 75—"General line of Buildings"—*Certificate of Superintending Architect conclusive.* The certificate of the superintending architect of the Metropolitan Board of Works, made under the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 75, and fixing the "general line of buildings" in a road, is conclusive as to a building erected before the certificate is made; and on the hearing of a summons (issued after the making of the certificate) for an offence under sect. 75, alleged to have been committed in respect of such building, the Justice has no jurisdiction to review the architect's decision, or decide for himself whether the line fixed by the certificate is the true general line.

So *held*, affirming the decision of the Court of Appeal (13 Q. B. D. 878, 53 L. J. M. C. 142, 51 L. T. 757, 49 J. P. 132, 1884 Dig. col. 269).

*Simpson v. Smith* (L. R. 6 C. P. 87, 40 L. J. M. C. 89, 24 L. T. 100) overruled. *SPACKMAN v. PLUMSTEAD BOARD OF WORKS* 10 App. Cas. 229, [54 L. J. M. C. 81, 53 L. T. 157, 33 W. R. 661, [49 J. P. 420 (H. L., E.)]

10. — *Metropolis Management Act, 1862* (25 & 26 Vict. c. 102), ss. 98, 107—*Notice of New Building—Notice to District Surveyor—Limitation of time.* L. was summoned by the Metropolitan Board of Works for laying out a new street of less than the required width, contrary to sect. 98 of the above Act. L. gave notice of his intended building in May 1883 to the district surveyor, and paid his fees, but no notice was given by the surveyor to the Board till November 1883. The complaint was made in March 1884:—

*Held*, by Hawkins and Smith, JJ., that notice to the district surveyor was the date of discovery by the Board, and therefore the complaint was too late, being more than six months after the discovery. *METROPOLITAN BOARD OF WORKS v. LATHEY* - - - 49 J. P. 245

11. — *Metropolis Management and Building Acts Amendment Act, 1878* (41 & 42 Vict. c. 32), ss. 14, 16—*Foundations—Site—Removal of Fæcal, Animal, or Vegetable Matter from Site—By-laws of Metropolitan Board of Works, Construction of.* By the Metropolis Management and Building Acts Amendment Act, 1878, s. 16, the Metropolitan Board of Works were empowered to make by-laws with respect to "the foundations of houses, buildings, and other erections, and the sites of houses, buildings, and other erections to be constructed after the passing of this Act, and the mode in which and the materials with which such foundations and sites shall be made, formed,

**METROPOLIS—continued.**

excavated, filled up, prepared, and completed for securing stability, the prevention of fires, and for purposes of health." By sect. 14 the term "site" is defined to mean "the whole space to be occupied by such house, building, or other erection between the level of the bottom of the foundations and the level of the base of the walls." The Metropolitan Board of Works made the following by-law: "No house, building, or other erection shall be erected upon any site or portion of any site which shall have been filled up or covered with any material impregnated or mixed with any faecal, animal, or vegetable matter, or which shall have been filled up or covered with dust, or slop, or other refuse, or in or upon which any such matter or refuse shall have been deposited, unless and until such matter or refuse shall have been properly removed by excavations or otherwise from such site";—*Held*, by Grove and Hawkins, JJ., that the meaning of the word "site" in the by-law was governed by the interpretation of that word in the Act, so that the by-law did not authorize the Metropolitan Board of Works to direct the removal of faecal, animal, or vegetable matter in the soil below the level of the bottom of the foundations. *BLASHILL v. CHAMBERS* - - 14 Q. B. D. 479, 53 L. T. 38, [49 J. P. 388]

12. — *Metropolis Management Acts—Temporary Structure—Continuing Offence—Time*—45 Vict. c. 14, s. 13—*Summary Jurisdiction Act* (11 & 12 Vict. c. 43), s. 11.] A temporary wooden structure was erected by the Respondents within the metropolitan area without a licence from the Metropolitan Board of Works. Within six months of the discovery, but more than six months after completion of the erection, the Board made a complaint, and took out a summons against the Respondents for the recovery of penalties:—

*Held*, by Mathew and Day, JJ., that the offence was a continuing one, and that the period within which the complaint must be made did not commence to run from the day on which the erection was completed. *METROPOLITAN BOARD OF WORKS v. ANTHONY & Co.* 54 L. J. M. C. 39, 33 W. R. [166, 49 J. P. 229]

13. — *Metropolitan Building Act, 1855—Public Building—Ambulance Station—Notice to District Surveyor*—18 & 19 Vict. c. 122, ss. 3, 38—41 & 42 Vict. c. 32, s. 16, by-law 5.] An ambulance station structurally disconnected with any building, and from which the public is rigorously excluded, is not of itself a "public building" within sect. 3 of the Metropolitan Building Act, 1855, so as to require the builder to deposit plans and sections of the building with the notice of its erection to the district surveyor under by-law 5, made under sect. 16 of the Metropolitan Management Act, 1878.

So *held*, by Coleridge, C.J., and Mathew, J. *JOSOLYNE v. MEESON* 53 L. T. 319, 49 J. P. 805

14. — *Metropolitan Paving Act* (57 Geo. 3, c. xxix.), ss. 80, 82—*Compulsory Purchase—Severance*.] A metropolitan vestry required, for the purpose of widening a street, a part of the buildings and site of an orphanage that would leave a substantial portion of the premises:—

**METROPOLIS—continued.**

*Held*, by Pearson, J., that (the owners wishing to sell the part required only) the vestry could not take the whole. *TEULIERE v. VESTRY OF ST. MARY ABBOTTS, KENSINGTON* - 30 Ch. D. 642, [55 L. J. Ch. 23, 53 L. T. 422]

— City of London—Tithes in kind—Tithe Prescription Act.  
*See* TITHE. 1, 2.

— City of London Court—Jurisdiction—Costs on higher scale.  
*See* CITY OF LONDON COURT.

— Mayor's Court—Jurisdiction—Prohibition.  
*See* MAYOR'S COURT.

— Metropolis Management Acts—Covenant to pay taxes, &c.  
*See* COVENANT. 4.

— Metropolis Management Acts—"Ordinary outgoings."  
*See* WILL—CONSTRUCTION. 32.

— Metropolitan Board of Works—Lands taken by—Payment out of purchase-money—Costs.  
*See* LANDS CLAUSES ACT. 7.

— Valuation Act—Provisional list—Alteration in value.  
*See* POOR-RATE. 6.

**MILITARY LAW**—Person subject to—*Habeas corpus*.  
*See* ARMY.

**MILK**—Adulteration—Sale of Food and Drugs Act.  
*See* ADULTERATION.

**MINE**—*Coal Mines Regulation Act, 1872* (35 & 36 Vict. c. 76), s. 18—*Check-weigher, Appointment of—Qualification—Person "Employed in the Mine."*] By the Coal Mines Regulation Act, 1872, s. 18, the persons employed in a mine, and paid according to the weight of the mineral gotten by them, may, at their own cost, station a check-weigher at the place appointed for the weighing of such mineral, in order to take an account of the weight thereof on behalf of the persons by whom he is so stationed; and "the check-weigher shall be one of the persons employed either in the mine at which he is so stationed, or in another mine belonging to the owner of that mine."—The Plaintiff, a check-weigher duly appointed under sect. 18, received a fortnight's notice to quit his employment from the men employed in the mine. Before the notice expired, the men held a fresh election, at which the Plaintiff (with others) presented himself as a candidate, and was again appointed:—*Held*, by Mathew and Smith, JJ., that the true construction of sect. 18 was to limit the class of persons from whom the men might appoint a check-weigher to persons employed in the mine by the mine-owner; that the Plaintiff ceased to have any employment under the mine-owner when he was first appointed check-weigher by the men; and therefore that his second appointment was invalid. *HOPKINSON v. CAUNT* 14 Q. B. D. 592, [54 L. J. Q. B. 284, 33 W. R. 522, 49 J. P. 550]

— Cost book—Winding-up—Inspection of documents.  
*See* COMPANY—COST-BOOK COMPANY.

**MINE**—*continued.*

— Income tax—Dead rent—Royalties—Deduction from gross profits.  
*See* REVENUE. 1.

— Railway—Minerals under or near—Right to work.  
*See* RAILWAY COMPANY. 18.

— Scotch law—Contract of excambian.  
*See* SCOTCH LAW. 3.

— Support of surface—Liability for subsidence.  
*See* SUPPORT. 2.

**MINISTER**—Income tax—Deductions.  
*See* REVENUE. 2.

**MINOR.**

*See* INFANT.

**MISCHIEVOUS ANIMAL**—Contributory negligence—Bull escaping from Defendant's pasture into Plaintiff's, through gap in fence which it was Plaintiff's duty to repair, and injuring Plaintiff's horse. *SCOTT v. GROVER* 48 *Amer. R.* 814 [(U.S.)]

2. — Dog—Worrying Sheep—Evidence as to other Sheep—28 & 29 *Vict. c. 60.*] L.'s dog was seen with another dog on a Welsh mountain worrying two lambs. The same day the shepherd found near the place four lambs dead, and next day ten more. L. being summoned for damage under the above statute:—*Held*, by Grove and Hawkins, J.J., that the evidence was sufficient to justify the magistrates in ordering L. to pay part of the value of the whole loss. *LEWIS v. JONES* [49 J. P. 198]

3. — Dog—Negligence—Proof of *scienter*—Watch-dog kept chained by day and loose at night. *MONTGOMERY v. KOESTER* 48 *Amer. R.* [253 (U.S.)]

**MISFEASANCE**—Directors.

*See* COMPANY—DIRECTORS.

— Promoter—Present for placing shares.  
*See* COMPANY—PROMOTER. 2.

**MISREPRESENTATION.**

— Vendor and purchaser—Suppression of facts by purchaser.  
*See* FALSE REPRESENTATION.

**MISTAKE**—*Lease—Rectification.*] Where there is mutual mistake in a deed or contract the remedy is to rectify by substituting the terms really agreed to. Where the mistake is unilateral the remedy is not rectification but rescission, but the Court may give to a Defendant the option of taking what the Plaintiff meant to give in lieu of rescission.

Plaintiff wrote a letter offering to the Defendant to make a lease to him of a portion of a block of three houses, consisting of the first, second, third, and fourth floors of all three houses, at a rent of £500 a year. Defendant wrote in answer, accepting the offer; and a lease was executed whereby all the upper floors of the block were demised by the Plaintiff to the Defendant at the rent of £500.

Plaintiff alleged that the first floor of one of the houses was included in the offer, and in the lease, by mistake, and that he always intended to reserve such first floor for his own use. Defen-

**MISTAKE**—*continued.*

dant denied that he accepted the offer, or executed the lease, under any mistake.

The Court having found upon the evidence that a common mistake was not sufficiently proved, but that mistake on the part of the Plaintiff was, gave judgment for rescission with an option to the Defendant to accept rectification instead. *PAGET v. MARSHALL* 28 *Ch. D.* 255, 54 *L. J. Ch.* [575, 51 *L. T.* 351, 33 *W. R.* 608, 49 *J. P.* 85]

— Consent to jurisdiction—Leave to appeal.  
*See* COUNTY COURT. 2.

— Contract.

*See* CONTRACT. 2, 3.

— Disentailing deed—Rectification—Jurisdiction.

*See* TENANT IN TAIL. 2.

— Law—Mutual—Solicitor's fee.

*See* SOLICITOR—BILL OF COSTS. 18.

— List of voters.

*See* PARLIAMENT. 6—8.

— Order passed and entered—Correction.

*See* PRACTICE—JUDGMENT. 3, 4.

— Sale of land—Compensation or rescission.

*See* VENDOR AND PURCHASER—COMPENSATION.

VENDOR AND PURCHASER—RESCISSION.

— Sale of land—interest.

*See* VENDOR AND PURCHASER—INTEREST. 2.

— Will.

*See* WILL—CONSTRUCTION. 25, 26.

**MOLESTATION**—Separation deed—Covenant against "molestation."

*See* HUSBAND AND WIFE—SEPARATION DEED. 2.

**MONEY PAID**—Goods lawfully seized for another's debt.

*See* ACTION. 1.

**MONTHLY TENANCY**—Notice to quit.

*See* LANDLORD AND TENANT—MONTHLY TENANCY.

**MORTGAGE** :—

I. CONTRACT.

II. FORECLOSURE.

III. MORTGAGEE IN POSSESSION.

IV. MORTGAGOR IN POSSESSION.

V. POWER OF SALE.

VI. PRIORITY.

VII. REDEMPTION.

**I. MORTGAGE—CONTRACT**—*Equitable mortgage—Agreement to charge—Power of attorney.*] D.

having been charged with a murder committed in a foreign country, was, under an extradition treaty, handed over to the authorities of the country to be tried on the charge. Before leaving England, however, he assigned all his property to P., and executed a general power of attorney in favour of P. and T., with the object of raising money for his defence. T. and the plaintiff were co-trustees of a marriage settlement, and T. proposed to the Plaintiff that consols belonging to the trust should be sold out, and the proceeds advanced on the security of a charge on D.'s property. The Plaintiff assented, and the consols

**I. MORTGAGE—CONTRACT—continued.**

were sold and the proceeds paid to T., who produced to the Plaintiff a document purporting to be a memorandum of deposit of the assignment and power of attorney, and an equitable charge to secure the advance. The Court held, on the evidence, that P. knew of the charge, and either actually authorized it, or left T. to do as he liked.

*Held*, by North, J., that the money had been advanced on the faith of an agreement to charge D.'s property; that such an agreement was within the powers of P. and T., and that if the agreement had not been fully carried out, the Plaintiff was entitled to have the charge carried into effect. *PARISH v. POOLE* - - - 53 L. T. 35

2. — *Receipt—Money due—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 22.* *SAUNDERS v. KENT* - - - W. N. (1885) 147

— *Fixtures, mortgage of—What passes under.*  
See *FIXTURES*.

**II. MORTGAGE—FORECLOSURE—Costs of—Apportionment—Mortgage of two Estates—Redemption—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 17.]** An action was brought by a mortgagee for the foreclosure of two mortgages of two distinct estates, executed by the same mortgagor to secure two different advances. Both mortgages were executed since the Conveyancing Act, 1881, came into operation.

*Held*, by Pearson, J., that the whole of the costs of the action ought to be included in the account relating to each estate, and that the mortgagor could not redeem either estate separately without paying the whole of the costs of the action. *CLAPHAM v. ANDREWS* 27 Ch. D. 679, [53 L. J. Ch. 792, 51 L. T. 86, 33 W. R. 395]

2. — *Equitable Mortgage—Sale instead of Foreclosure—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 25 (ii).]* Under the above subsection the Court has power to order a sale in lieu of foreclosure, at the request of an equitable mortgagee by deposit, although such deposit was not accompanied by an agreement to execute a legal mortgage, nor was there any memorandum of the charge.

So *held*, by Kay, J. *OLDHAM v. STRINGER*

[51 L. T. 895, 33 W. R. 251, W. N. (1884) 235]

3. — *Equitable Mortgage—Sale instead of Foreclosure—Account—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 25 (ii).]* An equitable mortgagee by deposit of deeds applied under the above sub-section, for an order for sale instead of foreclosure, there being a memorandum of the charge and an agreement by the mortgagor to execute a legal mortgage. The Court (Kay, J.) made an order for sale of the property, such sale not to take place until three months after the Chief Clerk's certificate, as to the amount due to the Plaintiff, should be filed; but refused to order an immediate sale after such certificate.

*Wade v. Wilson* (22 Ch. D. 235, 52 L. J. Ch. 399, 47 L. T. 696, 31 W. R. 237) and *Oldham v. Stringer* (*supra*) not followed. *GREEN v. BIGGS* [52 L. T. 680, W. N. (1885) 128]

4. — *Foreclosure absolute—Affidavit of non-payment.]* In a foreclosure action, where an affidavit of non-payment had been made by the person attending to receive the mortgage-moneys

**II. MORTGAGE—FORECLOSURE—continued.**

on behalf of the Plaintiff, to whom the money was due, Chitty, J., dispensed with an affidavit of non-payment by the Plaintiff himself. (But see next case.) *FRITH v. COOKE* - 52 L. T. 798, [33 W. R. 688, W. N. (1885) 129]

5. — *Foreclosure absolute—Affidavit of non-payment.]* Upon an application for an order for foreclosure absolute, where an affidavit of non-payment had been made by the person attending on behalf of the Plaintiff to receive the mortgage-moneys, Kay, J., declined to dispense with an affidavit by the Plaintiff stating that he had not received the mortgage-moneys between the day of attendance and the date of the application. (But see preceding case.) *BARROW v. SMITH* [52 L. T. 798, 33 W. R. 743, W. N. (1885) 136]

6. — *Inquiry, form of—Improvements—Account.]* In a foreclosure action by a first mortgagee, who was also third mortgagee, against the second mortgagees, the fourth mortgagee, and the mortgagor, the Plaintiff having entered into possession of the mortgaged property and laid out sums of money in lasting improvements, an account was directed of all sums of money properly laid out by the Plaintiff as mortgagee in lasting improvements upon the property. (Compare *Seton*, 4th Ed. p. 1067.) *HOUGHTON v. SEVENOAKS ESTATE CO.* 33 W. R. 341, W. N. [(1884) 243]

7. — *Judgment—Form of Order—Interest—Rules of Supreme Court, App. C., Section I., Form 5.]* In a foreclosure action, a mortgagee claimed payment, or, in default, sale or foreclosure. Judgment was given for immediate payment of principal and interest proved to be due, and, in default, for foreclosure, the account being directed with interest at the rate provided by the mortgage, the Plaintiff bringing into account what, if anything, should be received under the judgment. *LEE v. DUNSFORD* 54 L. J. Ch. 108, 51 L. T. 580

8. — *Judgment—Personal Judgment against Mortgagor—Form of Judgment.]* Form of judgment in a foreclosure action, when a personal judgment is taken against the mortgagor on his covenant for payment of principal and interest.

The form in *Grundy v. Grice* (*Seton*, 4th Ed. vol. ii., p. 1036 (Form No. 2) modified. *HUNTER v. MYATT* 28 Ch. D. 181, 54 L. J. Ch. 615, 52 [L. T. 509, 33 W. R. 411]

9. — *Judgment—Personal Order for Payment.]* The proper order in a foreclosure action, when an account and an order for personal payment of what may be found due is asked for against the mortgagor, is to direct payment of principal and interest within one month after the date of the Chief Clerk's certificate on the taking of the accounts.

*Semble*, if a mortgagee wants an immediate order for personal payment, he must ask for it by his pleadings and prove the amount due for principal and interest at the trial. *FARRER v. LACY HARTLAND AND CO.* - 25 Ch. D. 636, [53 L. J. Ch. 569, 50 L. T. 121, 32 W. R. 198, [384; 48 J. P. 567]

[*Affirmed by C. A.*, 31 Ch. D. 42, 53 L. T. 515, 34 W. R. 22.]

**II. MORTGAGE—FORECLOSURE—continued.**

**10. — Partnership—Mortgage of Share—**  
*Date at which Account of mortgaged Share is to be taken—Form of Order.*] When a partner mortgages his share in the partnership and the mortgagee brings an action to realise his mortgage, the proper order is to direct an account of what the mortgagor's interest in the partnership was at the date when the mortgagee proceeded to take possession under his mortgage, i.e., at the date of the writ; but if a dissolution of the partnership has previously taken place, the date of the dissolution is the date at which the account is to be taken. *WHETHAM v. DAVEY*  
 [30 Ch. D. 574, 53 L. T. 501, 33 W. R. 925]

**11. — Practice—Accounts and Inquiries—**  
*Rules of Supreme Court, 1883, Order xv., rr. 1, 2.*] In foreclosure actions where there is no preliminary question to be tried, the Plaintiff may obtain, under Rules of Supreme Court, 1883, Order xv., an order for an account with all necessary inquiries, and the usual directions as in a common foreclosure judgment *nisi*. Such order should be applied for by summons in Chambers and not by motion in Court, and only the costs of a summons in Chambers attended by counsel will be allowed. So held by Chitty, J. *SMITH v. DAVIES* or, *DAVIES v. SMITH*) 28 Ch. D. 650, 54 L. J. Ch. [278, 52 L. T. 19, 33 W. R. 211]

**12. — Practice—Death of mortgagor intestate—Insufficient estate—Eldest son appointed to represent estate—Form of Order—***O. xvi., r. 46.* *EAT v. GOTT* - - - *W. N. (1885) 46*

**13. — Practice—Period for redemption—**  
*several Defendants.*] Where there were two Defendants to a foreclosure action—the mortgagor and a second mortgagee who had joined in the Plaintiff's security to postpone his previously prior right, and as surety for the Plaintiff:—

*Held*, by Pearson, J., that only one period of six months should be allowed for redemption by both Defendants. *Bartlett v. Rees* (L. R. 12 Eq. 395, 40 L. J. Ch. 599, 25 L. T. 373, 19 W. R. 1046) and *General Credit and Discount Co. v. Glegg* (2 Ch. D. 549, 52 L. J. Ch. 297, 48 L. T. 182, 1 W. R. 421) followed. *SMITH v. OLDING*  
 [25 Ch. D. 462, 54 L. J. Ch. 251, 50 L. T. 357, 32 W. R. 386]

**14. — Practice—Period for redemption—**  
*Subsequent Incumbrancers.*] A first mortgagee *prima facie* entitled to a judgment in a foreclosure action limiting only one period for redemption, both as against subsequent incumbrancers and the mortgagor, and where there are conflicting claims as to priority between co-defendants, the practice, as settled by *Bartlett v. Rees* (L. R. 12 Eq. 395, 40 L. J. Ch. 599, 25 L. T. 373, 19 W. R. 1046) is to grant only one period for redemption. Where, however, the defendants have put in a defence or appeared at the bar and have proved or offer to prove their incumbrances, and there is no question of priority between them, the Court will at the request of the puisne incumbrancers, but not at the request of the mortgagor, limit successive periods for redemption.—A mortgagor has no right in himself more than one period of six months to redeem.

In a foreclosure action by the transferee of the first mortgagee, the statement of claim alleged

**II. MORTGAGE—FORECLOSURE—continued.**

that the Defendants other than the mortgagor claimed to have some charge upon the mortgaged premises subsequent to the Plaintiff's charge. None of the Defendants, including the mortgagor, put in a defence or appeared at the bar:—

*Held*, by Chitty, J., that the Plaintiff was entitled to a foreclosure judgment on the pleadings, allowing one period for redemption as against all the Defendants. *PLATT v. MENDEL. GURNEY v. CANTERBURY (VISCOUNTS)*  
 [27 Ch. D. 246, 54 L. J. Ch. 1145, 51 L. T. 424, 32 W. R. 918]

**15. — Practice—Period for redemption—**  
*Subsequent Incumbrances.*] In a foreclosure judgment against the mortgagor and subsequent incumbrancers, only one period for redemption will be fixed where none of the Defendants appear on the motion for judgment: whether it is alleged by the statement of claim that the subsequent incumbrancers are "entitled," or only that they "claim to be entitled" to charges upon the mortgaged premises. *DOBLE v. MANLEY*  
 [28 Ch. D. 664, 54 L. J. Ch. 636, 52 L. T. 246, 33 W. R. 409]

**16. — Practice—Period for redemption—**  
*Non-appearance of Defendants—One period for redemption fixed.* *LONDON v. HAMMER*  
 [W. N. (1885) 62]

**17. — Practice—Possession.**] Where an order *nisi* for foreclosure and possession had been made, the order absolute also provided for possession and was made *ex parte*. *WITHELL v. NIXON*  
 [28 Ch. D. 413, 54 L. J. Ch. 616, 33 W. R. 565]

— Joinder of claim for possession.

See PRACTICE—JOINDER OF ACTIONS. 3.

— Order—Alteration of.

See PRACTICE—JUDGMENT. 4.

**III. MORTGAGE—MORTGAGEE IN POSSESSION**

—*Account of rents and profits—Liberty to surcharge.*] The Defendants had by the judgment in the action been held to be mortgagees in possession of certain mortgaged estates, and the usual accounts and inquiries as against mortgagees in possession were directed. The Defendants brought in an account purporting to shew their receipts in respect of the rents and profits of the mortgaged estates, but which in fact only shewed certain lump sums received by them from one J. H. Blood, then deceased, their agent.

On motion by the Plaintiff for a further and better account:—

*Held*, by Pearson, J., that the account was sufficient, and that the Plaintiff's proper course was to surcharge the Defendants:—

*Held*, by the Court of Appeal (reversing the decision of Pearson, J.), that the Defendants were bound to render the further account, for that the receipts of Blood were as between the Plaintiff and the Defendants the receipts of the Defendants; the Defendants were bound to deliver an account shewing not only what they had received from Blood, but what he had received from the tenants, and that it was a question not of technicality but of substance, for without the knowledge derived from such an account the Plaintiff would be unable to proceed on the inquiry as to wilful default, which was a matter of surcharge, and

### III. MORTGAGE—MORTGAGEE IN POSSESSION —continued.

that the death of the Defendants' agent could not excuse the Defendants from this liability. *NOYES v. POLLOCK* 30 Ch. D. 336, 55 L. J. Ch. 54, [53 L. T. 430, 33 W. R. 787 (C.A.)]

2. — *Improvements—Expenditure in, after redemption decree.* A first mortgagee in possession who has, after a redemption decree in a suit by the second mortgagee, expended money on permanent improvements on the mortgaged property, is not to be charged with an increased occupation rent by reason of the value of the property having been increased by the improvements he has effected, unless the expenditure in improvements is allowed to him.

Decision of Bacon, V.C., reversed. *BRIGHT v. CAMPBELL* 54 L. J. Ch. 1077, 53 L. T. 428 (C.A.)

### IV. MORTGAGE—MORTGAGOR IN POSSESSION

—*Lease subsequent to Mortgage—Notice by Mortgagee to Tenant to pay rent to him.* C., the owner of a leasehold estate which was subject to a mortgage, entered without the privity of the mortgagees into an agreement with P. to grant him a lease for twenty-one years, and in 1875 P. took possession under this agreement. On the 25th of March, 1881, the mortgagees' solicitors wrote to P. stating that they, on behalf of the mortgagees, had withdrawn C.'s authority to receive the rents, and asking him to pay the rent due that day and all future rent to them. P. wrote to ask C. whether he ought to pay according to the notice, and C. replied that he would be correct in doing so. P. consulted his solicitors, who inspected the mortgage deed, and advised him that the mortgagees could claim rent from him. P. therefore paid the mortgagees the rent due on the 25th of March, and on the 22nd of June gave them notice to determine his tenancy at Christmas. At the end of the year the mortgagees refused to accept possession, and in June, 1882, they and C. commenced this action to compel P. to take a lease according to the agreement:—

*Held*, affirming the decision of Pollock, B., that the notice by the mortgagees to the tenant to pay rent to them and the payment accordingly did away with the agreement between C. and P. and made P. tenant from year to year to the mortgagees, and that specific performance of the agreement could not be decreed. *CORBETT v. PLOWDEN* [25 Ch. D. 678, 54 L. J. Ch. 109, 50 L. T. 740, [32 W. R. 667 (C.A.)]

2. — *Lease subsequent to Mortgage—Fixtures, Trade—Rights of Tenant.* A mortgagor in possession of premises let them to a tenant who brought on to them certain trade fixtures. The mortgagee subsequently entered and sold the premises under the power of sale contained in the mortgage:—

*Held*, by Pollock, B., and Manisty, J., that the fixtures did not pass under the mortgage, but remained the property of the tenant. *SANDERS v. DAVIS* 15 Q. B. D. 218, 54 L. J. Q. B. 576, [33 W. R. 655]

3. — *Sale by Mortgagor and First Mortgagee—Notice of Second Mortgage—Proceeds of Sale, how to be applied.* A mortgagor of a leasehold house, with the concurrence of the first mortgagees, who had notice of a second equitable mortgage,

### IV. MORTGAGE—MORTGAGOR IN POSSESSION —continued.

sold the property. Upon completion, the balance of the purchase-money, after payment of the first mortgagees, was handed to the mortgagor.

In an action by the second mortgagees against the mortgagor (who did not appear) and the first mortgagees:—

*Held*, affirming Bacon, V.C. (27 Ch. D. 187, 53 L. J. Ch. 860, 51 L. T. 325, 32 W. R. 913, 1884 Dig. col. 284), that the first mortgagees were liable to make good to the Plaintiffs the amount of their security to the extent of the balance of the purchase-money.

The doctrine in *Peacock v. Burt* (4 L. J. (N.S.) (Ch.) 33) will not be extended.

*Dictum* of Wood, V.C., in *Bates v. Johnson* (Joh. 304, 313, 314), as to the right of a first mortgagee to transfer to a third mortgagee in preference to the second, questioned. *WEST LONDON COMMERCIAL BANK v. RELIANCE PERMANENT BUILDING SOCIETY* 29 Ch. D. 954, [54 L. J. Ch. 1081, 53 L. T. 442, 33 W. R. 916 (C.A.)]

### V. MORTGAGE—POWER OF SALE—Costs of

*Abortive Sale—Cheque for Deposit dishonoured—Practice of Auctioneers.* The custom of auctioneers to accept on sales of large properties, a cheque in lieu of cash for the deposit, is reasonable, and a mortgagee-vendor was held to be justified in acting on it, and not to be guilty of negligence in the conduct of the sale, though the cheque was dishonoured.—In such a case a mortgagee, who has endeavoured to sell under his powers, is entitled to add the costs of the abortive sale to his security. *FARRER v. LACY HARTLAND & Co.* (No.1) 25 Ch. D. 636, 53 L. J. Ch. 569, 50 L. T. 121, [32 W. R. 196, 384, 48 J. P. 567 (Aff'd. by C.A., 31 Ch. D. 42, 53 L. T. 515, 34 W. R. 22.)]

2. — *Mortgage to Solicitor by Client.* A mortgage to a solicitor by his client contained a power of sale without any provisions for notice to the mortgagor, or for interest being three months in arrear, before the power could be exercised. The mortgagee did not explain to the mortgagor, when the deed was executed, that mortgages usually contained such provisions:—*Held*, by North, J., that, though three months' interest was in arrear, the power could not be exercised as against the mortgagor. *CRADDOCK (or CRADOCK) v. ROGERS* 53 L. J. Ch. 968, [51 L. T. 191, W. N. (1884) 166 (Affirmed by C.A., W. N. (1885) 134.)]

3. — *Setting aside Sale.* A mortgagor brought an action against his mortgagees, and a purchaser under them, asking that the sale might be set aside, and obtained judgment with liberty to redeem the property sold.

*Held*, that the Plaintiff was not entitled on appeal to have an order that the property be put up for sale again at the price given by the purchaser, and that if there were no higher bid the purchaser might be held to his bargain.

The decision of North, J. (21 Ch. D. 857, 51 L. J. Ch. 594, 46 L. T. 882, 30 W. R. 795), affirmed. *MARTINSON v. CLOWES* 52 L. T. 706, [33 W. R. 555, W. N. (1885) 41 (C.A.)]

### VI. MORTGAGE—PRIORITY—Deposit of Certificates of Shares—Lien of Company on Shares for



**MORTGAGE—PRIORITY—continued.**

*Moneys due from Shareholder—Notice.*] The articles of association of a company provided that the company should have a first and permanent lien and charge, available at law and in equity, on every share, for all debts due from the shareholder to the company. A shareholder deposited the certificates of his shares with his bankers as security for the balance then due from him to them on his current account, and notice of the deposit was given to the company:—

*Held*, by Field, J., that *Hopkinson v. Rolt* (9 H. L. C. 514, 9 W. R. 900) applied, and that the company could not claim priority over the bankers in respect of moneys which became due from the shareholder to the company after notice of the bankers' advance, but that the bankers were entitled to priority. *BRADFORD BANKING COMPANY v. BRIGGS & Co.* - 29 Ch. D. 149, [52 L. T. 643, 33 W. R. 730 (Reversed by C.A., 31 Ch. D. 19, 33 W. R. 887.)]

2. — *Equitable mortgage—Collateral Security by Bond—Judgment—Registration as Mortgage.*] When an equitable mortgagee, by deposit of title deeds, took a bond to secure the same debt, and entered up judgment thereon, which he afterwards registered as a mortgage against the lands:—

*Held*, that he did not thereby forfeit his security by equitable mortgage, or defeat its priority. *Re JENNINGS' ESTATE* - 15 L. R. Ir. 277

3. — *Equitable mortgage—Subsequent legal mortgage—Second legal mortgage paying off prior Equitable Charge.*] W. mortgaged a house, of which he was the owner in fee, to G., by deposit of title deeds, to secure an advance. He afterwards, in May, 1879, gave a legal mortgage of the same property to B. to secure a debt. B. did not then know of the equitable mortgage to G. In June, 1879, W. applied to the Defendant to make an advance to pay off the charge held by G. The Defendant advanced the money; G. handed the deeds back to W., who handed them to H., who was acting for all parties; and H. in his turn handed them to the Defendant. W., on or about the same date, executed a legal mortgage of the same premises to the Defendant to secure his advance. This deed did not recite the mortgage of the 1st of May to B., nor was the Defendant aware of its existence. B. subsequently became insolvent, and his trustee in liquidation (the Plaintiff) claimed priority for the mortgage to B. of the 1st May over that of June, 1879, to the Defendant.

*Held*, by Field and Manisty, JJ., that, as from the nature of the transaction it was intended that the Defendant should stand in the place of the equitable mortgagee, he was entitled to priority over the first legal mortgagee to the extent of the amount of the equitable mortgage. *MASON v. RHODES* - 53 L. T. 322

4. — *First and Second Mortgagees—Dealings between Mortgagee and First Mortgagee to prejudice of second Mortgagee's security.* *AYLING v. MERCER* - W. N. (1885) 166 (C.A.)

5. — *Fund in Court—Notice of Prior Incumbrance to Second Incumbrancer—Stop Order.*] A second incumbrancer of a fund in Court, who

**VI. MORTGAGE—PRIORITY—continued.**

at the time of taking his security had notice of the existence of the first incumbrance, cannot by obtaining a stop order gain priority over the first incumbrancer, even although the latter never obtains a stop order. *Re A. D. HOLMES* [29 Ch. D. 786, 55 L. J. Ch. 33 (C.A.)]

6. — *Legal Estate—Trustee—Policy—Notice of Charge—30 & 31 Vict. c. 144.*] A trustee who has the legal estate and takes from his *cestui que trust* an assignment of the equitable interest by way of security for money advanced to the *cestui que trust*, can avail himself of the legal estate as a protection against a prior incumbrance of which he had no notice.

The note in Sugden's Vendors and Purchasers (14th Ed. p. 379) on *Broune v. Savage* (4 Drew. 635) corrected.

The Act 30 & 31 Vict. c. 144, is intended to apply only as between the insurance office and the persons interested in the policy, and does not affect the rights of those persons *inter se*. Accordingly where a first incumbrancer on a policy had not given such notice as prescribed by the Act, and a second incumbrancer with notice of the prior charge had given the statutory notice:—

*Held*, by North, J., that the second incumbrancer did not thereby obtain priority. *NEWMAN v. NEWMAN* 28 Ch. D. 674, 54 L. J. Ch. 598, [52 L. T. 422, 33 W. R. 505]

7. — *Negligence of First Mortgagee in custody of Deeds.*] C., the manager of a joint stock company, executed a legal mortgage to the company of his own freehold estate, and handed over the title-deeds to them. The deeds were placed in a safe of the company, which had only one lock having duplicate keys, one of which was entrusted to C., as manager. Some time afterwards C. took out of the safe the deeds, except the mortgage, and handed them to W., to whom at the same time he executed a mortgage for money advanced to him by her, without notice of the company's security:—

*Held*, reversing the decision of the Vice-Chancellor of the Court of the County Palatine of Lancaster, that the mortgage of the company had priority over the mortgage to W.

The Court will postpone a legal mortgage to a subsequent equitable security: (1) where the legal mortgagee has assisted in or connived at the fraud which led to the creation of the subsequent equitable estate, of which assistance or connivance the omission to use ordinary care in inquiring after or keeping the title-deeds may be sufficient evidence where such conduct cannot otherwise be explained; or, (2), where the legal mortgagee has made the mortgagor his agent with authority to raise money, and the security given for raising such money has by misconduct of the agent been represented as the first estate.

But the Court will not postpone a legal mortgage to a subsequent equitable mortgagee on the ground of any mere carelessness or want of prudence on the part of the legal mortgagee. *NORTHERN COUNTIES OF ENGLAND FIRE INSURANCE COMPANY v. WHIPP* - 26 Ch. D. 482, [53 L. J. Ch. 629, 51 L. T. 806, 32 W. R. 626 (C.A.)]

**VI. MORTGAGE—PRIORITY—continued.**

8. — *Negligence—Legal Mortgage—Subsequent Deposit of Deeds—Recovery of Deeds—Purchase for Value without Notice—Judicature Act, 1873, s. 25, sub-s. 11.* A legal mortgagee had asked for the deeds which the mortgagor, who was his solicitor, made excuses for not giving to him. The mortgagor afterwards deposited the deeds with another mortgagee as security for money advanced without notice of the legal mortgage:—

*Held*, by North, J., in an action by the legal mortgagee for foreclosure, that he had not been guilty of fraud or negligence amounting to fraud, and that he could not be postponed to the mortgagee by deposit by reason of any negligence short of that:

*Held*, that the legal mortgagee was entitled to recover the deeds from the mortgagee by deposit, notwithstanding he was a purchaser for value without notice; and that s. 25, sub-s. 11, of the Judicature Act, 1873, did not alter the rule of law on the subject. *MANNERS v. MEW* (No. 2)

[29 Ch. D. 725, 54 L. J. Ch. 809, 53 L. T. 84

9. — *Negligence—Postponement of Holder of Legal Estate—Trustee of Marriage Settlement—Notice of Marriage of Mortgagor—Duty of Mortgagee to inquire as to Settlement.* In November, 1875, a husband deposited with his bankers the title-deeds of some leasehold houses, together with a memorandum of deposit, as a continuing security to the bankers for any overdraft of his wife's current account with them. In November, 1876, he died, having bequeathed all his property to his wife, and appointed her his executrix. After his death the deeds remained with the bankers, and the widow was allowed on the security of them to overdraw her account. In May, 1877, she married again. Prior to the marriage the houses were assigned by her to a trustee on trust for herself for life, and after her death on trust for an infant son of her first marriage absolutely. Power was given to the trustee to sell the houses during the life of the wife, at her request, and after her death at the discretion of the trustee. The trustee made no inquiry about the title-deeds, and no notice of the settlement was given to the bankers. In June, 1877, the husband and wife gave notice to the bankers of their marriage, and at their request a balance, which then stood to the credit of the wife's current account, was transferred to a new current account opened by the bankers with the husband. The deeds remained with the bankers, but no notice of the settlement was given to them. In November, 1877, at the request of the bankers, the probate of the first husband's will was sent to them, and at their request a new memorandum of deposit was in January, 1878, signed by the husband and wife, making the deeds a continuing security to the bankers for any overdraft of the husband's current account. In April, 1878, the wife died. The deeds were still with the bankers, and at that time the husband's current account was in credit. In 1883 the trustee made some inquiries, and then discovered that the deeds, which he had believed to be in the custody of the solicitor who had prepared the settlement, were with the bankers. He then gave the bankers notice of

**VI. MORTGAGE—PRIORITY—continued.**

the settlement, and claimed the deeds. This was the first notice that the bankers had had of the settlement:—

*Held*, by Pearson, J., that the omission of the trustee to inquire for the title deeds was negligence of such a character as prevented him from availing himself of the legal estate to give him priority over the equitable charge of the bankers, and that the *cestui que trust* stood in no better position.

*Held*, that the bankers were entitled to priority in respect of the amount due to them on their security at the time when they received notice of the settlement.

When a married woman executes a mortgage there is no obligation on the mortgagee to inquire whether a settlement was made on her marriage. *LLOYD'S BANKING COMPANY v. JONES*

[29 Ch. D. 221, 54 L. J. Ch. 931, 52 L. T. 469, [33 W. R. 781

10. — *Negligence—Possession of Deeds—Tacking—Subsequent Equitable Mortgagee acquiring Legal Estate.* By two separate mortgage deeds, dated 7th Aug., 1877, N., solicitor to S., mortgaged to W. and S. two separate estates, A and B, to secure £1250 on each estate. The B estate comprised five separate properties, which were separately described and numbered (1), (2), (3), (4), (5). S. asked N., as it was a trust matter, to send him the deeds, and N. sent a parcel, which S. sent on to his bankers without examination. It was afterwards found to contain only the two mortgage deeds. On the 20th Oct., 1880, N. deposited the title-deeds relating to (5) with L. to secure £300. On the 18th May, 1881, he deposited the deeds relating to (1), (2), (3), (4), to secure an overdraft of £300 with his bankers, the Plaintiffs. The deed relating to the A estate had been previously deposited with the Plaintiffs to secure his overdraft. Neither L. nor the Plaintiffs had at the time of their advances any notice of the first mortgage, nor had the Plaintiffs any notice of the advance to L. In June, 1882, N. became bankrupt. In July, 1882, the Plaintiffs took a transfer of the mortgages to W. and S. They then brought this action for foreclosure, claiming to tack the sum due on their equitable mortgage to that due on the first mortgage of B, so as to gain priority over L.

*Held*, by Pearson, J., (1) that S. had not been guilty of such negligence as to postpone his legal mortgage to the subsequent equitable incumbrances; (2) that the general rule as to tacking applied though the third mortgage did not include that part of the property in the first which was comprised in the second, and that the Plaintiffs had a right to recover the whole of their debt in priority to L. out of all the B estate. *ATHERLEY v. BARNETT* (or *BURNETT*)

52 L. T. 736, [33 W. R. 779, W. N. (1886) 70

11. — *Real Estate in Middlesex—Share in Proceeds of Sale of—Middlesex Registry Act (7 Anne, c. 20), s. 1—Notice to Trustees—Equitable Execution.* The local Registry Acts are intended to apply only to dealings at law or in equity with the land itself. Accordingly an incumbrancer upon a share in the proceeds of real estate in Middlesex devised in trust for sale obtains no priority over other incumbrancers on such share

**VI. MORTGAGE—PRIORITY—continued.**

by registering his mortgage deed, and the priorities of such incumbrancers rank according to the dates of their respective notices to the trustees.

*Malcolm v. Charlesworth* (1 Keen, 63) approved.

Although formal notice to the trustee of the proceeds of real estate devised in trust for sale or of a *chose in action*, of an incumbrance thereupon does not give priority over an earlier incumbrance of which the trustee may have obtained accidental notice, the converse proposition that incumbrances are to rank not in the order of notices given by the incumbrancers but of accidental knowledge obtained by the trustees, does not hold good.

A judgment creditor cannot, by giving notice to the trustee, put himself in a better position than the judgment debtor; and a judgment creditor who has obtained equitable execution by the appointment of a receiver subject to existing incumbrances was held to have obtained no priority by giving notice of the appointment to the trustee of the judgment debtor. So held, by Kay, J. *ARDEN v. ARDEN* 29 Ch. D. 702, [54 L. J. Ch. 655, 52 L. T. 610, 33 W. R. 593]

12. — *Tacking—Consolidation—Judgment.*  
*WITTHALL v. BLYTON* — W. N. (1885) 22

— Debentures.

See *COMPANY—DEBENTURES*. 5.

— Equitable mortgage of shares—Notice.

See *COMPANY—SHARES*. 4.

— Mortgage of shares—Articles of association.

See *COMPANY—MEMORANDUM*. 2.

**VII. MORTGAGE—REDEMPTION** — *Interest in lieu of Notice—Payment out of Fund in Court.* [The estate of a testator was being administered by the Court. One of the beneficiaries had mortgaged her reversionary interest, which fell into possession in Nov. 1884. The next month the mortgagor gave six months' notice in writing to pay off the mortgage. By an order made in Jan. 1885, on the further consideration of the action, certain funds in Court, representing the mortgagor's share, were carried to a separate account. In May an order was made directing payment to the mortgagees of the principal money due to them and interest to the 1st July. The mortgagees were served with notice of the application, and the order was made in their solicitor's presence. The order was not completed on the 1st July, and the mortgagees did not receive their money. They therefore took out a summons claiming six months' interest in lieu of notice:—

*Held*, by Pearson, J., that the principle that, where the money is not paid at the time fixed by the notice, the mortgagee is entitled to six months' further notice, does not apply where the mortgagee has consented to an order directing payment to him of money in Court, and delay arises in completing the order. *Re Moss. LEVY v. SEWILL* [31 Ch. D. 90, 55 L. J. Ch. 87, 34 W. R. 59]

— Decree for—Expenditure after, by mortgagee in improvements.

See *MORTGAGE—MORTGAGEE IN POSSESSION*. 2.

— Mortgage of two estates—Foreclosure action—Costs.

See *MORTGAGE—FORECLOSURE*. 1.

**VII. MORTGAGE—REDEMPTION—continued.**

— Period for—Foreclosure action.

See *MORTGAGE—FORECLOSURE*. 13—16.

**MORTGAGE**—Benefice with cure.

See *ECCLESIASTICAL LAW*. 1.

— By trustees of will to secure business debts.

See *WILL—TRUSTEES*. 2.

— Canada, law of.

See *COLONIAL LAW*. 4.

— Devise of house subject to.

See *WILL—ONEROUS DEVISE*.

— Equitable charge—Invalid transfer—Right to deed.

See *GIFT*. 4.

— Equitable sub-mortgage—Registration.

See *BILL OF SALE—REGISTRATION*. 3.

— Insufficient security—Interest in arrear—Apportionment.

See *APPORTIONMENT*. 1.

— Interest in land—Bequest to charity—Mortmain.

See *CHARITY*. 8.

— Investment by trustees on—Liability for losses.

See *TRUSTEE—LIABILITIES*. 4—6, 8.

— Leaseholds—Application to disclaim—Non-appearance of mortgagee.

See *BANKRUPTCY—DISCLAIMER*. 5.

— Limitation—Payment of interest.

See *LIMITATIONS, STATUTES OF*. 9, 10.

— Negotiation fee—"Arranging and obtaining loan."

See *SOLICITOR—BILL OF COSTS*. 8.

— Order to execute—Non-compliance—Nomination of person to execute.

See *PRACTICE—JUDGMENT*. 6.

— Receiver—Distress—Injunction.

See *LANDLORD AND TENANT—DISTRESS*. 3.

— Registration—Mortgage to secure future advances—Subsequent mortgage.

See *REGISTRY ACTS*.

— Renewable leasehold—Purchase of reversion by mortgagor—Mortgage of reversion.

See *LANDLORD AND TENANT—LEASE*. 10.

— Ship—Mortgagee—Insurable interest.

See *INSURANCE, MARINE*. 3.

— Solicitor mortgagee—Profit costs.

See *SOLICITOR—BILL OF COSTS*. 25.

— Solicitor's authority to receive mortgage money.

See *SOLICITOR—AUTHORITY*.

— To building society.

See *BUILDING SOCIETY*. 7, 8.

— Underlease—Sale subject to—Title.

See *VENDOR AND PURCHASER—TITLE*. 7

— Will—Trust for accumulations of rent to pay off mortgage.

See *ACCUMULATIONS*. 1.

**MORTMAIN.**

See *CHARITY*. 6—11.

**MORTMAIN—continued.**

— Exoneration—Debts and legacies—Charge.  
See EXECUTOR—ADMINISTRATION. 6.

**MOTION**—Notice of—Affidavits not served with—Irregularity.

See PRACTICE—NOTICE OF MOTION.

**MOTION FOR JUDGMENT.**

See PRACTICE—MOTION FOR JUDGMENT.

**MUNICIPAL CORPORATION**—*Election of Councillors—Petition against some only of the Candidates returned on a Ground affecting the Validity of the Election as a whole—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 87, 88, 91, 93, 242, Sched. 3, Part II., rr. 3 and 10—Appeal—Municipal Election Petition—Supreme Court of Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14.* An election petition may be presented under the Municipal Corporations Act, 1882, s. 87, against some only of the persons returned at a municipal election, although the ground of the petition is one affecting the validity of the election as a whole; and the Court can on such petition declare the persons so petitioned against not to have been duly elected.—The three Respondents and six other persons were nominated as candidates to fill four vacancies in the town council of a borough under the Municipal Corporations Act, 1882. An objection having been made to the nomination papers of H., and three other candidates (not the Respondents), on the ground that they were invalid under Sch. 3, Part II., rule 10, because the persons subscribing the paper in each case had subscribed nomination papers of other candidates, the mayor erroneously held the objection to be good, being of opinion that rule 10 applied to a case where there were several vacancies. The objection to H. was withdrawn; but the three other candidates objected to were prevented from going to the poll, and at the election which was afterwards held, H. and the three Respondents were declared duly elected. Upon a petition against the return of the Respondents, to which H. was not a party, it was admitted that an election of town councillors where there are several vacancies is governed by the Municipal Corporations Act, 1882, Sch. 3, Part II., rule 3, which provides that the same burgesses may subscribe as many nomination papers as there are vacancies, and that rule 10 does not apply to a case of several vacancies; and it was further admitted that as the objection would have been valid against all the candidates returned, the whole election might have been declared void if H. had been a party to the petition; but it was contended that as he was not before the Court, and therefore as his election could not be questioned, the return of the Respondents must stand good:—*Held*, that although the erroneous decision of the mayor affected the validity of the whole election, nevertheless the Court had power to deal with those candidates returned who were petitioned against, and that the return of the Respondents must be declared void, notwithstanding that the return of H. could not be questioned, he not being a party to the petition. Decision of Mathew and Day, JJ. (14 Q. B. D. 73, 54 L. J. Q. B. 146, 52 L. T. 258, 33 W. R. 212, 48 J. P. 454), affirmed.

**MUNICIPAL CORPORATION—continued.**

Notwithstanding s. 93, sub-s. 7, of the Municipal Corporations Act, 1882, which enacts that the decision of the High Court upon a petition questioning a municipal election shall be final, nevertheless an appeal, if leave be given, lies from a judgment of the Queen's Bench Division upon a petition of that nature to the Court of Appeal, owing to s. 242 of the statute above mentioned, which in effect incorporates the Supreme Court of Judicature Act, 1881, s. 14, whereby in certain cases an appeal is allowed from the High Court of Justice to the Court of Appeal, if special leave be given. *LINE v. WARREN* 14 Q. B. D. 548, 54 L. J. Q. B. 291, [49 J. P. 516 (C.A.), 53 L. T. 446

2. — *Election of Councillors—Nomination Paper—Signature of assenting Burgess—Defect in Entry on Burgess Roll—Variance—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 241.* A nomination paper at an election of town councillors was subscribed with the full and correct name of "Charles Arthur Burman" as an assenting burgess; but his name was erroneously entered upon the burgess roll as "Charles Burman" only:—*Held*, by Grove and Lopes, JJ., that the defect was not such as was remedied by 45 & 46 Vict. c. 50, s. 241, enacting that "no misnomer or inaccurate description of any person . . . named in any roll . . . required by this Act shall hinder the full operation of this Act with respect to that person . . . provided the description of that person . . . be such as to be commonly understood."—The words "commonly understood" in this proviso mean "commonly understood by any person comparing the nomination paper and the burgess roll." *MOORHOUSE v. LINNEY. THORPE v. LINNEY* 15 Q. B. D. 278, [53 L. T. 343, 33 W. R. 704, 49 J. P. 471

3. — *Election of Councillor—Disqualification of Candidate by composition with Creditors when formerly in office—Notice of resignation.* S. served as town councillor for the T. ward from 1877 to 1880, when he left at the office of the town clerk a notice of resignation addressed to the mayor and council. No action was taken thereon by the council, and no fine paid or tendered by S. S. did not sit in council or vote after the date of the notice. On the following day S. filed a liquidation petition. In August a composition was accepted by the creditors of S. S. did not pay his debts in full. At an election of town councillors for the T. ward, in 1884, S. was returned. The objection was then taken that S. was disqualified, he having been in liquidation when he was a member of the council, and not having paid 20s. in the pound:—*Held*, by Pollock, B., and Manisty, J., that the objection was valid.

*Held*, also, that where a statute provides that in a given event persons shall be re-eligible for election, that is tantamount to saying that they shall be disqualified until they comply with the conditions of requalification. *FUTCHER v. SAUNDERS* — — — 49 J. P. 424

4. — *Election of Councillors—Meeting in Room attached to Political Club—Illegal Hiring—Application for Relief—Municipal Elections*

**MUNICIPAL CORPORATION**—*continued.*

(*Corrupt Practices*) Act, 1884 (47 & 48 Vict. c. 70), ss. 16, 20.] In order to support an application under s. 20 of the above Act, it will not be sufficient that notice of intention to make the application has been advertised in local papers, but such notice should be published in such a manner as will ensure a reasonable certainty that persons interested had notice; and it will also be insufficient, in the affidavits upon which the application is made, merely to state that the act in respect of which relief is sought arose from inadvertence, and not from any want of good faith, without shewing some reasonable excuse for such inadvertence. So held, by Grove and Hawkins, JJ. *Ex parte* PERRY - - - 48 J. P. 824

5. — *Election—Illegal Practice—Placard without Printer's name on face—Municipal Elections (Corrupt Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 14, 20.* The applicants, four persons who stood as candidates at a municipal election, employed G. as their printer, and a fortnight before the election C., one of the applicants, went to G. and drew his attention to s. 14 of the above Act, which makes it illegal to issue placards, &c., without the printer's name on the face, and G. accordingly gave instructions to his workmen, in accordance with C.'s instructions. Shortly before the election G. printed, published, and posted posters on behalf of the applicants without his name and address, but on discovering the omission took steps to rectify it. A prosecution under the Act was begun against the applicants and G., but by consent the hearing of the summons before the magistrates was adjourned until an application was made to the Court for an order excusing the applicants from the consequences of the omission. The applicants then applied under s. 20, and filed affidavits to the effect that the issuing of the posters without the printer's name and address was due to inadvertence, and not to the want of good faith:—

*Held*, by Grove, J., and Huddleston, B., that, under the circumstances, the applicants were entitled to an order excusing them from the consequences of the omission under s. 20. *Ex parte* CLARK - - - 52 L. T. 260

6. — *Resignation of Corporate Office—Delivery of Resignation to Town Clerk—Power to withdraw Resignation—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 36.* Under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 36,—which enacts that a person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof,—the resignation is completed by the delivery of the writing to the town clerk and the payment of the fine, and cannot afterwards, even with the assent of the corporation, be withdrawn. *REG. v. WIGAN (MAYOR OF)* - - - 14 Q. B. D. 908, 54 L. J. Q. B. 338, [52 L. T. 435, 33 W. R. 547, 49 J. P. 372

**MURDER**—"Necessity."

*See* CRIMINAL LAW. 16, 17.

**MUTUAL DEALINGS**—Set-off—Debtor and creditor.

*See* BANKRUPTCY—MUTUAL DEALINGS.

**N.****NAME**—Trade name.

*See* TRADE NAME.

**NAME CLAUSE**—Settlement—Fee simple estate—Repugnancy.

*See* WILL—CONDITION. 2.

**NATIONAL DEBT COMMISSIONERS**—*Petition for re-transfer of Stock—Dismissal of former Petition by same Petitioner—Res Judicata—Discovery of Fresh Evidence—National Debt Act, 1870 (33 & 34 Vict. c. 71), ss. 51, 54, 55.* The jurisdiction given to the Court by sect. 55 of the National Debt Act, 1870, to decide upon petition as to the validity of a claim for the re-transfer of stock, which has been transferred to the National Debt Commissioners under the provisions of sect. 51, is to be exercised in the mode in which the ordinary jurisdiction of the Court is exercised.

Therefore, if a petition for the re-transfer of stock is heard on its merits, and is dismissed on the ground that the Petitioner has failed to make out his title, he cannot, on the subsequent discovery of fresh evidence in support of his title, present a fresh petition for the same object, without leave of the Court previously obtained.

*Decision of Pearson, J. (25 Ch. D. 231, 49 L. T. 770, 32 W. R. 337, 1884 Dig. col. 289), affirmed. Re MAY. Ex parte HOUSE - 28 Ch. D. 516, [54 L. J. Ch. 338, 52 L. T. 78, 33 W. R. 917 (C.A.)*

2. — *Unclaimed Stock and Dividends—Inquiry as to Title to the Fund. Ex parte ROSKROW [W. N. (1885) 3*

**NAVIGATION.**

*See* SHIP—COLLISION.

**NE EXEAT REGNO**—Debtors Act.

*See* ARREST. 4.

**NECESSARIES**—For ship—Lien—Foreign ship.

*See* SHIP—NECESSARIES.

**NEGLIGENCE**—*Contributory—Railway—Level crossing—Evidence.* W., intending to travel by the Defendants' line from N. station, arrived there ten minutes before the train started, took his ticket, and crossed the line to the up platform, from which his train was to start, but finding no shelter there except a shed, and the night being very cold and dark, returned to the down platform, where there was a waiting-room, and sat there by the fire till he heard his train approaching. He then hurried to get back to the up platform. There was only a level crossing, at each end of which a lamp was fixed. W. attempted to cross when the train by which he was to travel was about twenty yards off, but was struck down and killed by the engine. It was usual for a porter to stand at this crossing when a train approached, to warn passengers against crossing, but on the night in question no porter was there, nor was there any notice given of the approach of the train. W.'s widow having brought an action for damages against the Railway Co., the judge left the whole question to the jury, who found a verdict for the plaintiff for £100.

*Held*, by Field, Manisty, and Lopes, JJ., that the judge ought to have withdrawn the case from the jury and directed a non-suit, on the ground

**NEGLIGENCE—continued.**

that the evidence shewed that W. had so far conduced, by his negligence, to his own death, as to disentitle the Plaintiff to recover.

*Held* also, that in an action for damages for negligence, it is insufficient to entitle the Plaintiff to have his case submitted to the jury, that he has proved some negligence on the Defendants' part, if it also appears, in the opinion of the judge, that the Plaintiff was guilty of such contributory negligence that no reasonable jury could find a verdict in his favour. *WRIGHT v. MIDLAND RAILWAY CO.* - 51 L. T. 539 (Reversed by C.A., see W. N. (1885) at p. 39.)

2. — *Contributory—Railway—Level Crossing in Station—Province of Jury.* If, in an action of negligence, the Plaintiff gives evidence of negligence on the part of the Defendant, and also gives evidence of what may or may not be considered as amounting to contributory negligence on his own part, the case ought to be left to the jury.

The Plaintiff, an intending passenger by the Defendants' railway, having received his ticket, was obliged to cross the line by a level crossing in order to get from the booking office to the platform from which his train would start. Whilst crossing he was knocked down and injured by a train which he was unable to see till it was about twenty yards from him, owing to a sharp curve on the line. The night was dark, and there was no one at the crossing to warn the Plaintiff of the approaching train, which was a special train running through the station at a fast speed, and not mentioned in the time-tables. At the trial the judge directed a non-suit on the authority of *Davey v. London and South Western Railway Co.* (12 Q. B. D. 70, 53 L. J. Q. B. 58, 49 L. T. 739, 48 J. P. 279).

*Held*, by Grove, Manisty, and Lopes, JJ., that the case ought not to have been withdrawn from the jury, and that the non-suit was wrong. *BROWN v. GREAT WESTERN RAILWAY CO.*

[52 L. T. 622

3. — *Contributory—Tramway.* A cab had stopped to take in a passenger in a steep and narrow street; one of its wheels rested upon a tramway rail. The driver of a tramway car proceeding down the incline saw the obstruction fifty yards away, and whistled. He was going slowly, but he did not stop his car, because he expected up to the last moment that the cab would be drawn out of his way, and then, from the steepness and greasiness of the street, was unable to do so. The car caught the cab, and damaged both it and its horse. In an action of damages against the tramway company:—*Held*, that their driver was in fault in not stopping his car when he first saw the cab, and that the cabman was not guilty of any contributory negligence. *M'DERMAID v. EDINBURGH STREET TRAMWAYS CO.*

[12 C. of S. Cas. 15 (Sc.)

4. — *Contributory—Railway collision—Passenger's arm on sill of open window of carriage.* *FARLOW v. KELLY* - 108 U. S. 288

5. — *Contributory—Railway company—Driver, having free pass, ordered by servant of company to ride on top of a cattle car.* *LITTLE ROCK RAILWAY CO. v. MILES* 48 Amer. R. 10 (U.S.)

**NEGLIGENCE—continued.**

6. — *Contributory—Person walking on path he knows to be dangerous on account of snow and ice.* *CITY OF ERIE v. MAGILL* 47 Amer. R. 739 [(U.S.)

See also *CITY COUNCIL OF MONTGOMERY v. WRIGHT* - - - - id. 422

7. — *Evidence of negligence—Railway carriage left standing on siding, but too near main line.* *FARLOW v. KELLY* - - 108 U. S. 288

8. — *Liability—Breach of Duty—Articles sold consigned in Defective Truck to Vendee—Injury to Servant of Vendee.* The Defendant, a colliery owner, consigned coals sold by him to the buyers by rail in a truck rented by him from a waggon company for the purposes of the colliery. Through the negligence of the Defendant's servants the truck was allowed to leave the colliery in a defective state. In consequence of the defect in the truck injury was occasioned to the Plaintiff, one of the buyer's servants, who was employed in unloading the coals, and had got into the truck for that purpose:—*Held*, by Grove and Smith, JJ., that there was a duty on the part of the Defendant towards the Plaintiff to exercise reasonable care with regard to the condition of the truck, and the Defendant was therefore liable to the Plaintiff in respect of the injuries sustained by him. *ELLIOTT v. HALL (or NAILSTONE COLLIERY CO.)* 15 Q. B. D. 315, 54 L. J. Q. B. 518, [34 W. R. 16

9. — *Liability—Highway—Diversion—Owner of Land—Duty to Fence.* A duty is cast upon those who, in the exercise of statutory powers, divert a public footpath, to protect, by fencing or otherwise, reasonably careful persons using the footpath from injury through going astray at the point of diversion. *HURST (or HIRST) v. TAYLOR* 14 Q. B. D. 918, 54 L. J. Q. B. 310, [33 W. R. 582, 49 J. P. 359

10. — *Liability—Omission of Duty under Statute—Protection by Statute—Construction of Local Act, 7 & 8 Geo. 4, c. lxxv., s. 219.* *PRATT v. NENE OUTFALL COMMISSIONERS* W. N. (1884) [215 (C.A.)

11. — *Liability—Dangerous premises.* *CAHILL v. LAYTON* - 46 Amer. R. 46 (U.S.)  
*NAYE v. FLACK* - - - - ib. 205.  
*PARKER v. BARNARD* - - - - ib. 450.

12. — *Liability—Railway accident—Burden of proof—Preponderance—Passenger—Government mail agent travelling with free pass exempting company from liability.* *SEYBOLT v. NEW YORK, & C., RAILWAY CO.* [47 Amer. R. 75 (U.S.)

— *Agent—Loss through fraud of solicitor.*

See *PRINCIPAL AND AGENT*. 3.

— *Collision caused by.*

See *SHIP—COLLISION*.

— *Damage caused by—Remoteness.*

See *DAMAGES*. 10, 11.

— *Injury caused by mischievous animal.*

See *MISCHIEVOUS ANIMAL*.

— *Injury to servant—Master's liability.*

See *MASTER AND SERVANT*.

— *Innkeeper—Loss of guest's property.*

See *INNKEEPER*. 2.

**NEGLECT**—*continued.*

- Mortgage—Priority.  
See MORTGAGE—PRIORITY. 7—10.
- Railway Company.  
See RAILWAY COMPANY. 3, 4.
- Separate actions in respect of same act of.  
See JUDGMENT. 2, 3.
- Solicitor's liability for.  
See SOLICITOR—LIABILITY. 2, 3.
- Trustee.  
See TRUSTEE—LIABILITIES.

**NEGOTIABLE INSTRUMENT.**

See BILL OF EXCHANGE.

**NEW SOUTH WALES**—Law of.  
See COLONIAL LAW. 9—11.

**NEW TRIAL.**

See PRACTICE—NEW TRIAL.

**NEWSPAPER**—*Property in Title—Interlocutory junction.* The proprietor of a newspaper named "The Mail," established for nearly a century, and published three times a week at A.M., at the price of 2d., in London, but whose principal circulation was in the provinces and abroad, was held not entitled to an interlocutory injunction to restrain the Defendant from using a daily morning paper which he had just started, and which was published in London at A.M., at the price of 1d., the title of "The Morning Mail."

The right of the proprietor of a newspaper to prevent another person from adopting the same similar name for a similar publication is not founded on the right of property in the proprietor, but rests on the equitable doctrine that the user of such name is reasonably calculated to induce the public to believe that the new paper is that of the original proprietor, and to pass off his paper as that of the original proprietor.

Decision of Pearson, J., affirmed. *WALTER v. MOTT* - 54 L. J. Ch. 1059, 53 L. T. 487, [W. N. (1885) 156 (C.A.)]

- Libel — Criminal information — Fiat of Public Prosecutor.  
See CRIMINAL LAW. 15.

**NEXT FRIEND.**

See PRACTICE—NEXT FRIEND.

**NEXT OF KIN**—Appointment to object of power with remainder to.  
See POWER. 2.

- Bequest to—Exclusion of named persons.  
See WILL—CONSTRUCTION. 30.

**NOTICE**—Abandonment of ship—Constructive total loss.

See INSURANCE, MARINE. 9.

- Appeal in bankruptcy—Notice sent by post—Time.

See BANKRUPTCY—APPEAL. 3.

- Appeal in bankruptcy—Preliminary objection.

See BANKRUPTCY—APPEAL. 4, 5.

- Appeal—Service on solicitor.

See PRACTICE—APPEAL. 14.

- Bankruptcy notice.

See BANKRUPTCY—ACT OF BANKRUPTCY, 1, 2.

**NOTICE**—*continued.*

- Claim by tenant for compensation for improvements.

See LANDLORD AND TENANT—IMPROVEMENTS. 2.

- Constructive—Title.

See VENDOR AND PURCHASER—TITLE. 2, 9.

- Defects of title—Restrictive covenants.

See VENDOR AND PURCHASER—TITLE. 5.

- Directors—Shareholders—Statute of Limitations.

See COMPANY—PROMOTER. 2.

- Employers' Liability Act—Notice of trial.

See MASTER AND SERVANT. 13.

- In lieu of statement of claim.

See PRACTICE—PLEADINGS. 1.

- Lands Clauses Act—Notice to treat.

See LANDS CLAUSES ACT. 15—18.

- New building—District surveyor—Limitation of time.

See METROPOLIS. 10.

- New trial in County Court.

See COUNTY COURT. 4.

- No proceeding for a year—Signing judgment.

See PRACTICE—JUDGMENT. 5.

- Of action—Innocent infringer of copyright—Costs.

See COPYRIGHT. 2.

- Of action against constable.

See CONTAGIOUS DISEASES ACT. 1.

- Of objection—Voter—Description of list—Mistake.

See PARLIAMENT. 6.

- Of trial.

See PRACTICE—TRIAL. 7, 8.

- Payment off of mortgage—Interest in lieu of notice.

See MORTGAGE—REDEMPTION.

- Suspension of payment.

See BANKRUPTCY—ACT OF BANKRUPTCY. 5, 6.

- To company—What effective.

See COMPANY—SHARES. 4.

- To determine tenancy.

See LANDLORD AND TENANT—LEASE. 6.  
LANDLORD AND TENANT—YEARLY TENANCY.

- To judgment debtor—Transfer of judgment summons to Bankruptcy Court.

See BANKRUPTCY—RECEIVING ORDER. 1.

- To quit—Monthly tenancy.

See LANDLORD AND TENANT—MONTHLY TENANCY.

- To Sheriff, of bankruptcy petition.

See BANKRUPTCY—PETITION. 3.

**NOTICE OF MOTION**—To set aside award—Affidavits not served with—Irregularity.  
See PRACTICE—NOTICE OF MOTION.

**NUISANCE**—House rented with knowledge that it is used for prostitution—Liability to adjacent proprietor. *MARSAN v. FRENCH* - 48 Amer. R. [272 (U.S.)]

**NUISANCE—continued.**

2. — *Injunction—Fouling Stream—Quia Timet Action.*] In order to maintain a *quia timet* action to restrain an apprehended injury the Plaintiff must prove imminent danger of a substantial kind, or that the apprehended injury, if it does come, will be irreparable.

*Earl of Ripon v. Hobart* (3 My. & K. 169), *Attorney-General v. Corporation of Kingston* (13 W. R. 888), and *Salvin v. North Brancepeth Coal Company* (L. R. 9 Ch. 705) discussed.

The Plaintiff was a manufacturer of paper, his mills being situate on the bank of a river, the water of which he used to a large extent in his process of manufacture, for which it was essential that the water should be very pure. The Defendants, who were alkali manufacturers, were depositing on a piece of land close to the river, and about one mile and a half higher up than the Plaintiff's mill, a large heap of refuse from their works. It was proved that in the course of a few years a liquid of a very noxious character would flow from the heap, and would continue flowing for forty years or more, and that if this liquid should find its way into the river to any appreciable extent the water would be rendered unfit for the Plaintiff's manufacture, and his trade would be ruined. The Plaintiff did not allege that he had as yet sustained any actual injury. The Defendants said that they intended to use all proper precautions to prevent the noxious liquid from getting into the river:—

*Held*, by Pearson, J., that it being quite possible by the use of due care to prevent the liquid from flowing into the river, it being also possible that, before it began to flow from the heap, some method of rendering it innocuous might have been discovered, the action could not be maintained, and must be dismissed with costs.

But the dismissal was expressly declared to be without prejudice to the right of the Plaintiff to bring another action hereafter, in case of actual injury or imminent danger. (For the form of judgment adopted, see W. N. 1885, p. 120). *FLETCHER v. BEALEY* 28 Ch. D. 688, 54 L. J. Ch. [424, 52 L. T. 541, 33 W. R. 745

3. — *Railway Company—Cattle Station—Additional Lands.*] A railway company were by their Act authorized, among other things, to carry cattle, and were also authorized to purchase by agreement (in addition to the lands which they were empowered to purchase compulsorily) any lands not exceeding in the whole fifty acres, in such places as should be deemed eligible, for the purpose of providing additional station yards, &c., for receiving, loading, or keeping any cattle or any goods, &c., conveyed or intended to be conveyed by the railway, and for making convenient ways thereto, or for any other purposes connected with the undertaking which the company should judge requisite; and they were empowered to sell the additional lands, and to purchase in lieu thereof other lands which they should deem more eligible for their additional purposes, and afterwards to sell the same as aforesaid, and so from time to time. The company bought under this power a piece of land adjoining one of their stations and used it as a cattle dock. The noise of the cattle and drovers was a nuisance to the

**NUISANCE—continued.**

occupiers of certain houses near the station, and they brought an action to restrain the company from continuing the nuisance:—

*Held*, affirming the decision of North, J. (25 Ch. D. 423, 53 L. J. Ch. 209, 50 L. T. 89, 32 W. R. 364, 48 J. P. 260, 1884 Dig. col. 297), that the Plaintiffs were entitled to an injunction, for that there was nothing in the Act which by necessary implication authorized the creation of a nuisance on the additional lands. *TRUMAN v. LONDON, BRIGHTON, AND SOUTH COAST RAILWAY CO.* 29 Ch. D. 89, 54 L. J. Ch. 949, 52 L. T. 522, [33 W. R. 762, 49 J. P. 581 (C.A.)

(Reversed by H. L., W. N. 1885, p. 222.)

- By rural authority—Injunction against—Dissolution of rural authority.  
See LOCAL GOVERNMENT. 2.
  - Indecent exposure—Public place.  
See CRIMINAL LAW. 11.
  - Obstruction of highway—Traction engine.  
See HIGHWAY. 5.
  - Pollution of well—Underground water—Injunction.  
See WATER. 4.
  - Public Health Acts.  
See PUBLIC HEALTH ACTS. 8—10.
- NULLITY OF MARRIAGE.**  
See HUSBAND AND WIFE—DIVORCE. 4, 5.
- Practice.  
See PRACTICE—DIVORCE. 5, 6, 11.
  - Scotch law.  
See SCOTCH LAW. 4.

## O.

**OATH** — *Oath of Allegiance—Disbelief in a Supreme Being—Penalty—Parliamentary Oaths Act, 1866* (29 Vict. c. 19), ss. 3, 5—*Promissory Oaths Act, 1868* (31 & 32 Vict. c. 72)—*Evidence—Journals of House of Commons—Practice of House of Commons.*] A member of parliament, who does not believe in the existence of a Supreme Being, and upon whom an oath has no binding effect as an oath but only as a solemn promise, is, owing to his want of religious belief, incapable by law of "making and subscribing" the oath of allegiance appointed by the Parliamentary Oaths Act, 1866, ss. 1, 3, as amended by the Promissory Oaths Act, 1868; and if he takes his seat and votes as a member, although he has gone through the form of making and subscribing the oath appointed by those statutes, he will be liable upon an information at the suit of the Attorney-General to the penalty imposed by the Parliamentary Oaths Act, 1866, s. 5.—*Omichund v. Barker* (1 Atkyns, 21; Willes, 538) followed and applied. —In order that the oath of allegiance imposed upon members of the House of Commons upon taking their seats by the Parliamentary Oaths Act, 1866, as amended by the Promissory Oaths Act, 1868, may be "solemnly and publicly made and subscribed" within the meaning of s. 3 of



**OATH**—*continued.*

the former statute, it must be taken by a member with the assent of the House according to the requirements of the Standing Orders, and after he has been called upon by the Speaker to be sworn. — Upon the trial of an information at the suit of the Attorney-General against a member of the House of Commons for voting without having taken the oath of allegiance within the meaning of the Parliamentary Oaths Act, 1866, as amended by the Promissory Oaths Act, 1868, evidence of the practice observed in the House of Commons as to taking the oath of allegiance is admissible for the purpose of explaining the construction of those statutes, and the journals of the House of Commons are admissible as evidence for the purpose of shewing from a member's conduct as therein recorded, that owing to his want of religious belief he is by law incapable of taking an oath. **ATTORNEY-GENERAL v. BRADLAUGH**

[14 Q. B. D. 667, 54 L. J. Q. B. 205, 52 L. T. 589, [33 W. R. 673, 49 J. P. 500 (C.A.) and, in Court [of first instance only, 1 C. & E. 440

**OBSTRUCTION**—Of highway—Traction engine.

*See* HIGHWAY. 5.

— Of light.

*See* LIGHT.

**OFFICE**—Corporate—Resignation—Withdrawal of.

*See* MUNICIPAL CORPORATION. 6.

**OFFICER**—Of company—Examination of.

*See* COMPANY—WINDING-UP. 5, 6.

— Of local board—"Interested in contract with board."

*See* PUBLIC HEALTH ACTS. 11, 12.

**OFFICIAL RECEIVER.**

*See* BANKRUPTCY—OFFICIAL RECEIVER.

**ONUS PROBANDI**—Bill of sale—Omission in grantor's description—Intention to deceive.

*See* BILL OF SALE—FORMALITIES. 1.

— Death—Presumption of.

*See* EVIDENCE. 10.

— False pretence—Representation of ownership.

*See* CRIMINAL LAW. 8.

— Misdelivery by railway company—Liability.

*See* RAILWAY COMPANY. 15.

— Nullity of marriage by reason of insanity.

*See* HUSBAND AND WIFE—DIVORCE. 4.

— "Pretenced title"—Purchase of.

*See* VENDOR AND PURCHASER. 6.

— Proof by married woman in husband's bankruptcy.

*See* BANKRUPTCY—PROOF. 7.

— Proof in bankruptcy—Judgment recovered after act of bankruptcy.

*See* BANKRUPTCY—PROTECTED TRANSACTION. 1.

**OPINION**—Evidence of, on religious subjects.

*See* EVIDENCE. 9.

**OPTION TO PURCHASE**—Lease—Covenant.

*See* LANDLORD AND TENANT—LEASE. 7.

— Will—Interest not transmissible to executors.

*See* WILL—CONSTRUCTION. 31.

**ORDER.**

*See* PRACTICE—JUDGMENT.

**ORDER AND DISPOSITION**—Of bankrupt.

*See* BANKRUPTCY—ORDER AND DISPOSITION.

**OVERSEERS**—Parish—Bill in Parliament—Op-

position by overseers—Costs.

*See* POOR LAW. 2.

**P.**

**PARCELS**—Settlement—Advowson.

*See* ADVOWSON. 2.

**PARLIAMENT**—Vote—Borough Vote—Occupation—Reform Act, 1832 (2 & 3 Will. 4, c. 65), s.

11.] A person was entered on roll of a borough as tenant and occupant of part of a farm which lay within the borough bounds. The only building on this part of the farm was a substantial wooden pigsty erected by the tenant. This pigsty had not been used during the year before the 31st of July.—*Held*, that as there had been no occupation of any building with which the occupation of the land could be combined, the voter's name must be struck off the roll.

*Quære*, as to the character of the building required by the statute. **JOHNSTON v. GUILD**

[12 C. of S. Cas. 42 (Sc.)

2. — Vote—County Vote—"Tenement"—*Dwelling-house*—Amendment—41 & 42 Vict. c. 26, s. 28 (xiii.).] The nature of the qualification of a person on the list of parliamentary voters was given as "tenement and garden," and the description of the qualifying property as "part of bailiff's tenement." The revising barrister having amended the qualification by inserting the words "dwelling-house" before "tenement" and omitting "garden":—

*Held*, that he had power to do so, as no new qualification was introduced, and no injustice was done to either claimant or objector thereby, but that he ought also to have omitted the word "tenement." **DASHWOOD v. AYLES** 55 L. J. Q. B. 8, [53 L. T. 588, 34 W. R. 53, W. N. (1885) 189 (C.A.)

3. — Vote—Parochial Relief—Alms, Receipt of—2 Will. 4, c. 45, s. 36.] By the provisions of a charity, regulated by a scheme of the Charity Commissioners, a certain number of the poor inhabitants of a borough, who had not been for two years in receipt of parish relief, were received into an almshouse, where certain weekly payments and other benefits were bestowed upon them. They were liable to be removed for misconduct and other causes.

*Held*, by Coleridge, C.J., Grove and Cave, J.J., that they were disqualified from voting, having received alms within the above section.

**Harrison v. Carter** (2 C. P. D. 26, 25 W. R. 182) followed. **BAKER v. MONMOUTH TOWN CLERK**

[34 W. R. 64, 49 J. P. 776

4. — Vote—Parochial Relief—2 Will. 4, c. 45, s. 36.] The Appellant and others had, during a portion of the qualifying period, and at a time when great distress prevailed, been employed by the guardians of their union to break

**PARLIAMENT—continued.**

stones, and had received payment therefor, not in any way commensurate with the amount of work done, but with the wants of each person employed, the number of each man's family being taken into consideration.

*Held*, by Coleridge, C.J., Grove and Cave, JJ., that such payments constituted "relief," and disqualified the persons so employed from being registered. *MAGARRILL v. WHITEHAVEN OVERSEERS* — 55 L. J. Q. B. 38, 49 J. P. 743

5. — *Vote—Revising Barrister—Appearance of Voter before—41 & 42 Vict. c. 26, s. 28 (xi).]* At the hearing of an objection to a voter's name being retained on a list of parliamentary voters, B. stated that he appeared on behalf of the voter, and refused to answer a question put to him by the objector, whether or not he had been requested by the voter to appear on his behalf, and the revising barrister declined to order him to answer the question, and allowed him to give evidence in support of the voter's qualification. — *Held*, by Coleridge, C.J., Grove and Cave, JJ., that the above sub-section does not require that a person appearing on behalf of a person, against whom objection is made, should have been personally authorized to do so.

*Quære*, whether any authority is necessary under the sub-section. *FORD v. SMERDON*

[49 J. P. 760

6. — *Vote—Revising Barrister—Notice of Objection—Description of List, where more than One—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, sub-s. 2, and Sched. Form I. 1, 2.]* A notice of objection given to overseers was as follows: "I hereby give you notice that I object to the name of W. B. being retained in the Blockhouse list of persons, Division 1, entitled to vote at the election of members to serve in parliament for the parliamentary borough of W." There were three lists of parliamentary voters for the Blockhouse, viz. 1. householders and occupiers, — 2. freemen, — 3. lodgers. The first of these only had divisions. The name of W. B. was on the parliamentary list 1, Division 1, for the Blockhouse: — *Quære*, whether this notice was a sufficient compliance with Form I. No. 1, in the schedule to the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26)? — *Held*, by Coleridge, C.J., Stephen and Cave, JJ., that, if not, the inaccurate description of the list was a "mistake" which the revising barrister had power to correct, under sect. 28, sub-sect. 2, of the Act. *BOLLEN v. SOUTHALL* 15 Q. B. D. 461, 54 L. J. Q. B. 589, [34 W. R. 44, 49 J. P. 119, 1 Colt. 368

7. — *Vote—Revising Barrister—Qualification in List—Mistake in Statement of—Correction—41 & 42 Vict. c. 26, s. 28, sub-s. 12.]* The qualification of a voter was stated in the third column of the list to be "offices, successive occupation," and in the fourth column "High Street and Charles Street," whereas it was proved that during the whole of the qualifying period he had occupied one office only, namely, in High Street, and would have had by reason of such occupation a good and sufficient qualification. The misdescription was an error of the overseers: — *Held*, by Coleridge, C.J., Stephen and Cave, JJ.,

**PARLIAMENT—continued.**

that the revising barrister had power under 41 & 42 Vict. c. 26, s. 28, to correct the mistake, and should have amended the list by striking out the words "successive occupation" and "Charles Street." *LYNCH (or BLOSSE) v. WHEATLEY*

[14 Q. B. D. 504, 54 L. J. Q. B. 289, 53 L. T. 49, [1 Colt. 364

8. — *Vote—Revising Barrister—Description of qualifying Property—Houses in Succession—Omission of One—Mistake—Amendment—41 & 42 Vict. c. 26, s. 28.]* The nature of the qualification of a voter was described on the parliamentary list as "Dwelling houses in succession," and the name and situation of the qualifying property were described in the fourth column of the list "as 44, Oxford Street and 34, Prospect Place, Cowick Street." He had, in fact, occupied three houses in succession during the qualifying period, but the overseer by mistake omitted to specify the third house, viz. 31, Prospect Place, and the occupation of the two only as they appeared on the list was insufficient to give the vote. These facts were proved before the revising barrister, and he was asked to amend the fourth column, and did so by striking out the figures "44" and "34"—*Held*, by Stephen and Cave, JJ. (Lord Coleridge, C.J., dissenting), that under 41 & 42 Vict. c. 26, s. 28, the revising barrister had power to correct the mistake, although it should not have been corrected by striking out the numbers, and that the list should be amended by inserting "and 31" after the words "Oxford Street" in the fourth column of the list. *FORD v. HOAR*

[14 Q. B. D. 507, 54 L. J. Q. B. 286, 53 L. T. 44, [33 W. R. 566, 49 J. P. 103, 1 Colt. 351

9. — *Vote—Service Franchise—Occupation of Rooms in Workhouse by Industrial Trainer—Board Room and Master's Residence in same Building—48 Vict. c. 3, s. 3.]* As part of his salary A. was allowed to have the exclusive use and occupation of two rooms, viz., a sitting and bedroom, in the main building of a workhouse, and during the whole of the qualifying period separately occupied such rooms as a dwelling by virtue of his employment as industrial trainer at the workhouse. *Held*, by Coleridge, C.J., Grove and Cave, JJ., that the fact that the master of the workhouse resided in other rooms in another part of the workhouse building did not prevent A. from obtaining the service franchise under the above section, nor did the fact that the guardians of the poor reserved a room in such building for use as a board room. *ADAMS v. FOX (or FORD)*

[55 L. J. Q. B. 13, 34 W. R. 64, 49 J. P. 711

10. — *Vote—Service Franchise—Shop assistant—Sole and exclusive Use of Bedroom—Common Room for Meals—48 Vict. c. 3, s. 3.]* The claimant, a shop assistant, had, during the qualifying period, by virtue of his employment the sole use of a bedroom in a dwelling-house belonging to his employers, in which were a number of other bedrooms occupied by other persons in the same employment. The claimant and all the other persons residing in the house had their meals in a common room, of which they each had the joint use. The employers exercised a general control over the house, and enforced such control by means of a resident caretaker, but not otherwise.

**PARLIAMENT—continued.**

*Held*, by Coleridge, C.J., Grove and Cave, JJ., that each assistant who had the sole use of a bedroom under the above circumstances had obtained the service franchise by virtue of the above section. *STRIBLING v. HALSE* 55 L. J. Q. B. 15, [49 J. P. 727]

11. — *Vote—Service Franchise—Soldiers*—48 Vict. c. 3, ss. 3, 9 (ix.).] Officers and non-commissioned officers in the army had resided in quarters in blocks of barrack buildings. In each block officers of superior rank to the claimants also resided; the commanding officer occupying a separate dwelling within the barrack enclosure. The claimants' quarters were liable to inspection by superior officers, and the claimants themselves were subject to many disciplinary regulations.

*Held*, by Coleridge, C.J., Grove and Cave, JJ., that the Appellants were servants of the Crown, and not of their superior officers; that the Crown, if affected by the Representation of the People Act, 1884, was mentioned therein; that they were to be deemed inhabitant occupiers of their quarters, and that no person under whom they "served in their office, service, or employment," resided in the same dwelling-house within the meaning of sect. 3 of that Act. *ATKINSON v. COLLARD. SEDGWICK v. NEVILLE. LOWRY v. COLLARD. FORD v. BARNES* 55 L. J. Q. B. 18, 24, [34 W. R. 75, 50 J. P. 23, W. N. (1885) 197]

12. — *Vote—Soldiers in Barracks—Break of Residence—Representation of the People Act, 1867* (30 & 31 Vict. c. 102), s. 4.] Where soldiers have been absent on duty from their barracks for twenty-one days during the qualifying period, they have not complied with the conditions of the above section, and have not constructively occupied those barracks so as to be entitled to be placed on the list of voters.

*Ford v. Hart* (L. R. 9 C. P. 273, 22 W. R. 153) followed. *FORD v. ELMSLEY* 55 L. J. Q. B. 24, [34 W. R. 78]

13. — *Vote—Undergraduates—Break of Residence.*] The undergraduates of Oxford and Cambridge Universities are not permitted to reside in their rooms during the vacations, which comprise nearly six months of the year, without special leave from the college authorities, who are accustomed to let and otherwise make use of their rooms during their absence.

*Held*, by Coleridge, C.J., Grove and Cave, JJ., that such compulsory absence amounted to a break of residence disqualifying them from the exercise of the franchise. *TANNER v. CARTER* (or *CASTOR*). *BANKS v. MANSELL* 55 L. J. Q. B. 27, [34 W. R. 41, 49 J. P. 790]

— *Bill in—Opposition by parish overseers—Costs.*

*See POOR LAW.* 2.

— *Oath of allegiance—Religious belief. See OATH.*

**PARTICULARS.**

*See PRACTICE—PLEADINGS.* 2, 3.

— *Ecclesiastical law—Criminal suit.*

*See PRACTICE—ECCLESIASTICAL.*

— *Patent—Objections.*

*See PATENT.* 7, 8.

**PARTIES TO ACTION.**

*See PRACTICE—PARTIES.*

**PARTITION—Practice—Costs—Sale—Out of whose Share of Purchase-money Costs to be paid.**  
*JENNINGS v. FOSTER* — — — **W. N. (1884) 200**

2. — *Practice—Parties—Annuitant.* *POOLE v. POOLE* — — — **W. N. (1885) 15**

3. — *Sale—Conversion—Subsequent Lunacy of Beneficiary.*] N. having died intestate in 1879, leaving P. one of four co-heiresses-at-law, an action was brought asking for sale, in lieu of partition, of N.'s realty, and an order for sale was made in June, 1880. The sale took place in August, 1880, and the proceeds were carried to the credit of the action: "Proceeds of sale of the intestate's real estate." In April, 1882, by the order on further consideration in the action, one-fourth of the money standing to that account was ordered to be paid to P. subject to duty. P. left the money in Court, and took no steps concerning it. In January, 1884, by an order made on a lunacy petition, T. was authorized to apply to the Chancery Division for a transfer of the one-fourth share to the account of P., a person of unsound mind, "Proceeds of the sale of the real estate of N.," and the transfer was made accordingly. P. died in June, 1884.

*Held*, by Pearson, J., that, there being no evidence that P. was of unsound mind at the date of the sale and the order for payment to her, the fund then ordered to be paid to her belonged to her absolutely without any trust or equity for reconversion, and went on her death to her personal representatives. *Re PICKARD. TURNER v. NICHOLSON* — 53 L. T. 293, W. N. (1885) 137

4. — *Sale instead of—Jurisdiction—Discretion—Partition Act, 1868* (31 & 32 Vict. c. 40), s. 3.] Under the circumstances mentioned in the above section the Court has jurisdiction to direct a sale instead of partition, but the jurisdiction is discretionary, and the Court of Appeal will not ordinarily interfere with the judge's discretion.

When it does not appear that a division cannot reasonably be made, a sale should not be directed in the absence of other circumstances to give the jurisdiction.

Decision of Bacon, V.C., affirmed. *Re DYER. DYER v. PAYNTER* 54 L. J. Ch. 1133, 33 W. R. 806 [(C.A.)]

— *Sale—Conveyance—Solicitors' Remuneration Act, 1881.*

*See SOLICITOR—BILL OF COSTS.* 13.

**PARTNERSHIP—Articles—Arbitration Clause—Continuance after Term expired—Jurisdiction—Stay of Proceedings.**] The articles of a partnership contained an arbitration clause, providing, in effect, that all disputes or questions respecting the partnership affairs, or the construction of the articles, should be referred to arbitration. There were also clauses providing for the purchase by the continuing partners of the share of a deceased partner. The partnership had been continued for some time after the expiration of the term specified in the articles, when the executors of a deceased partner brought an action against the surviving partner for the winding-up of the partnership. The Defendant moved for a stay of proceedings

**PARTNERSHIP—continued.**

and a reference of the matters in difference between the parties to arbitration. One of the questions was, whether it was for the Court or for the arbitrators to determine which of the clauses in the articles, and in particular whether the purchasing clauses, applied to the partnership so carried on after the expiration of the term.

*Held*, by Kay, J., that it was for the arbitrators, and not for the Court, to determine which of the articles applied; and that a stay of proceedings must be directed, and a reference of all matters in difference to arbitration. *COPE v. COPE*

[52 L. T. 607, W. N. (1885) 110.]

2. — *Contract—Participation in Profit and Loss—Injunction—Receiver.* Although an agreement for participation in profit and loss is *prima facie* evidence of a partnership between the contracting parties as between themselves, yet the question of partnership must in all cases depend upon the intention of the parties as it appears on the contract.

By an agreement between the Plaintiff and the firm of H. & Co., the members of which were the two Defendants, it was agreed that for the part taken by the Plaintiff in the business, he should receive a fixed salary of £180, and in addition should receive one eighth share of the net profits, and bear one eighth share of the losses, as shewn by the books when balanced: and the Plaintiff agreed to advance £1500 to the business. The agreement was to be determined on four months' notice on either side. The Plaintiff had been previously a clerk to the Defendants, and he continued to perform similar duties after the execution of the agreement, and was not introduced to the customers as a member of the firm, and did not sign the name of the firm to bills. The Defendants being dissatisfied with the Plaintiff gave him notice to determine the agreement, and excluded him from the place of business. The Plaintiff brought an action for winding up the partnership, and moved for an injunction and receiver. Pearson, J., refused the motion, on the terms of the Defendants paying £1500 into Court:—

*Held*, by the Court of Appeal (affirming the order of Pearson, J.), that on the true construction of this agreement the Plaintiff was in the position of a servant, and that there was no such partnership between the Plaintiff and the Defendants as to entitle the Plaintiff to an injunction or receiver.

*Pawsey v. Armstrong* (18 Ch. D. 698, 50 L. J. Ch. 683, 30 W. R. 469) questioned. *WALKER v. HIRSCH* — — — 27 Ch. D. 460, [54 L. J. Ch. 315, 51 L. T. 481, 32 W. R. 992 (O.A.)]

3. — *Dissolution—Judgment for—Order for Accounts being prosecuted—Summons for Direction for a Return of Part of Premium.* Where a Plaintiff, who entered into a partnership for a long term of years and paid a premium, of which, in certain events, that did not happen, he was to have a proportion returned to him, obtained judgment for a dissolution and an order for accounts and inquiries, and after the accounts had been prosecuted, asked, by summons, for a direction that he was entitled to be credited with a sum as for return of premium, *held*, by Kay, J.,

**PARTNERSHIP—continued.**

that though the Court had the power to make an addition to the judgment, yet as the Plaintiff knew all the facts at the time when it was pronounced, had present to his mind the question whether he was or not entitled to any such return, and came to the conclusion that he was not, this was not a case in which the relief asked for should be granted, and dismissed the summons with costs.

In partnership cases relief is given by directing a return of premium as for partial failure of the consideration, but such relief ought not to be granted without the leave of the Court; after decree made declaring the partnership dissolved, and directing the usual accounts to be taken, and leave ought not to be given unless the circumstances are such as would have authorized the Court to give leave to bring a supplemental action. *EDMONDS (or EDMUNDS) v. ROBINSON*

[29 Ch. D. 170, 54 L. J. Ch. 586, 52 L. T. 339, [33 W. R. 471]

4. — *Dissolution—Sale of Assets—Form of Order.* In an action for the dissolution of a partnership an order by consent was asked for, including, amongst other inquiries, an inquiry "in what manner and upon what terms and conditions the partnership assets might be sold most beneficially for all parties interested therein." *Held*, by North, J., that the proper order was one for sale of the assets with the judge's approbation. *CLASS v. MARSHALL* — — — 33 W. R. 409

5. — *Dissolution—Sale of Assets—Form of Order.* Where a judgment for dissolution of partnership is taken by consent, the minutes should not contain an inquiry in what manner and upon what terms and conditions the partnership assets may be sold most beneficially for all parties interested therein, but should simply direct that the assets should be sold or otherwise disposed of with the approbation of the judge. *Class v. Marshall (supra)* followed. *PAGE v. SLADE*

[54 L. J. Ch. 1131, 52 L. T. 961, 33 W. R. 701, [W. N. (1885) 141]

6. — *Liabilities—Firm of Solicitors—Deposit of Bonds with one Partner—Liability of Firm—Scope of Business.* Trustees under a will deposited certain bonds payable to bearer with P., a member of the firm of solicitors who were acting for the estate. His partners had no knowledge of this, but letters referring to the bonds were copied in the letter-book of the firm and were charged for in the bill of costs of the firm, and the bonds were included in a statement of account which the firm made out for the trustees. P. paid some of the interest of the bonds by cheques of the firm, but on each occasion recouped the firm by a cheque for the same amount on his private account. P. misappropriated the bonds:—

*Held* (reversing the judgment of Denman, J., 24 Ch. D. 731, 53 L. J. Ch. 365, 49 L. T. 633, 32 W. R. 198, 1884 Dig. col. 302), that the cheques, letters and entries were too ambiguous to affect the other partners with acquiescence in P. having the custody of the bonds as part of the partnership business, and that they could not be held liable for their misappropriation.

*Harman v. Johnson* (2 E. & B. 61) and *Earl of Dundonald v. Masterman* (L. R. 7 Eq. 504,

**PARTNERSHIP—continued.**

38 L. J. Ch. 350, 20 L. T. 271, 17 W. R. 548)  
considered. *CLEATHER v. TWSIDEN*

[28 Ch. D. 340, 54 L. J. Ch. 408, 52 L. T. 330,  
[33 W. R. 435 (C.A.)]

7. — *Liability of Partners—Solicitors—Money Scrivening—Trust Money—Payment to account of Firm—Loan on Personal Security—Breach of Trust. MANNERS v. MEW* (No. 1)  
[W. N. (1885) 68

— Action against partners in name of firm—Judgment.

See PRACTICE—PARTIES. 8.

— Action against—Service of writ on one partner.

See PRACTICE—JUDGMENT. 1.

— Dissolution—Partition or sale to partner—Stamp.

See REVENUE. 11.

— Mortgage of share in—Account.

See MORTGAGE—FORECLOSURE. 10.

— Proof by executors of deceased partner.

See BANKRUPTCY—PROOF. 8.

**PASSENGER—By railway.**

See RAILWAY COMPANY. 4, 6—9.

**PATENT—Infringement—Importation and User of Apparatus made Abroad according to the Specification of an English Patent—User for Experiment and Instruction.]** User of a pirated article for the purpose of experiment and instruction is user for advantage, and an infringement of the patent.

The Defendant, an English electrician, purchased and imported from foreign manufacturers apparatus which if made here would have infringed the Plaintiff's patent. The Defendant maintained that he had only purchased the apparatus for examination and experiment by himself and his pupils, as certain royalty-paid instruments in his possession were too expensive to be taken to pieces; and he insisted that he had never sold, and had never otherwise used the apparatus:—

*Held*, by Kay, J., that such user of the pirated apparatus by the Defendant was a user for advantage and an infringement of the patent. *UNITED TELEPHONE COMPANY v. SHARPLES*

[29 Ch. D. 164, 54 L. J. Ch. 633, 52 L. T. 384,  
[33 W. R. 444]

2. — *Infringement—Injunction—Patents, Designs, and Trade-marks Act, 1883* (46 & 47 Vict. c. 57), s. 32—*Threat of Legal Proceedings.*] On motion under the Patents, Designs, and Trade-marks Act, 1883, s. 32, to restrain the publication of advertisements warning the public that the invention claimed by the applicant is an infringement of patent rights claimed by the advertisers, and that all necessary proceedings will be taken to protect such rights should any attempt be made to manufacture or supply the invention claimed by the applicant, the applicant, as a condition precedent to obtaining an injunction, must shew that there has been no infringement on his part. And if in opposition to the motion a case of alleged infringement is raised by the Respondents' affidavits, an injunction will not be granted,

**PATENT—continued.**

although the Respondents decline to take legal proceedings in respect of such alleged infringement against the applicant. So *held*, by Chitty, J. *BARNEY v. UNITED TELEPHONE COMPANY*

[28 Ch. D. 394, 52 L. T. 573, 33 W. R. 576]

3. — *Infringement—Slander of Title—Injunction to restrain issue of Warning Circular.]* An action was begun by the makers of certain "water elevators" for an injunction to restrain the Defendants from issuing a circular cautioning the public against the use of such elevators as being direct infringements of certain patents of the Defendants. The Plaintiffs subsequently gave notice of motion to restrain the issue of this circular till the trial of the action. A cross-action was then begun by the Defendants claiming an injunction to restrain the Plaintiffs from infringing their patents.

*Held*, by Kay, J., that, as there was no evidence of bad faith on the Defendants' part, they ought not to be restrained from issuing the circular until their action had been disposed of, but that they must undertake to prosecute their action without delay. *HOUSEHOLD & ROSHER v. FAIRBURN & HALL* - - - 51 L. T. 498

4. — *Practice—Accounts of Foreign Profits—46 & 47 Vict. c. 57, s. 25, cl. 4.] Held*, that 46 & 47 Vict. c. 57, s. 25, cl. 4, does not alter the rules adopted by the Judicial Committee. It is the duty of a patentee applying for a prolongation to produce accounts of all the profits received under foreign patents in respect of his invention. *Re NEWTON'S PATENTS* - 9 App. Cas. 592,  
[52 L. T. 329 (P.C.)]

5. — *Practice—Costs—Discretion—Patent Law Amendment Act, 1852* (15 & 16 Vict. c. 83), s. 43—*Lord Cairns' Act* (21 & 22 Vict. c. 27)—*Sir J. Rolt's Act* (25 & 26 Vict. c. 42).] In an action in the Court of the County Palatine to restrain infringement of a patent the Defendants delivered particulars of objection. At the trial the Judge held the patent invalid for an objection appearing on the face of it, and dismissed the action with costs, stating his opinion that the Defendants ought to have the costs of the witnesses brought up to support their particulars of objection, though they had not been called, as the Plaintiffs virtually had been non-suited. On taxation the Registrar disallowed these costs, but the Vice-Chancellor held that they must be allowed. The Plaintiffs appealed:—

*Held*, that neither Lord Cairns' Act (21 & 22 Vict. c. 27) nor Sir J. Rolt's Act (25 & 26 Vict. c. 42) made it obligatory on a Court of Equity to follow the rule as to costs of particulars of objections laid down by the Patent Law Amendment Act, 1852 (15 & 16 Vict. c. 83), s. 43, and that the rule which applied to Courts having no discretion as to costs ought not to be followed by analogy by a Court which had discretion as to costs; that the Vice-Chancellor had therefore power to give these costs, and that they must be allowed. *PARNELL v. MORT, LIDDELL, & CO.*  
[29 Ch. D. 325, 53 L. T. 186, 33 W. R. 481 (C.A.)]

6. — *Practice—Interrogatories—Revocation of Patent—Petition—Patents, &c., Act, 1883* (46 & 47 Vict. c. 57), s. 26—*Judicature Act, 1873,*

**PATENT—continued.**

s. 100—*O. XXXI., r. 1—O. LXXI., r. 1.*] In a proceeding by petition to procure the revocation of a patent under sect. 26 of the Patents Act, 1883, Kay, J., granted leave to the petitioner to exhibit interrogatories upon the usual terms of making a deposit. *Re HADDAN's (or HADDON's) PATENT*

[54 L. J. Ch. 126, 51 L. T. 190, 33 W. R. 96,  
[W. N. (1884) 192]

7. — *Practice—Particulars of Objection delivered by one of two Partners in Action against both—15 & 16 Vict. c. 83, s. 41—Letters Patent—Estoppel.*] If a patentee becomes bankrupt, and his trustee in bankruptcy assigns the patent, the patentee is not estopped from afterwards denying the validity of the patent, as against the assignee.

So held, affirming the decision of the Court of Appeal (26 Ch. D. 700, 53 L. J. Ch. 891, 51 L. T. 729, 33 W. R. 60, 1884 Dig. col. 306).

A patentee having gone into liquidation his trustee in liquidation assigned the patent. The patentee afterwards went into a trade partnership with S. The assignees of the patent brought an action against the patentee and S. for an injunction and damages for infringements of the patent alleged to have been committed in partnership. The defence alleged the invalidity of the patent, and the Defendants delivered particulars of objections, viz., that the Defendants would deny the infringement, and that the Defendant S. would rely on their objections to the validity of the letters patent on the ground of want of novelty and insufficiency of the specification:—

Held, reversing the decision of the Court of Appeal, that under 15 & 16 Vict. c. 83, s. 41, it was not necessary for every one of two or more Defendants defending in the same interest to deliver particulars of objections, and that the patentee was not precluded from setting up at the trial the invalidity of the patent on the ground of want of novelty and insufficiency of the specification. *SMITH v. CROPPER* - 10 App. Cas. 249, [55 L. J. Ch. 12, 53 L. T. 330, 33 W. R. 753 (H.L., E.)]

8. — *Practice—Particulars of Objections—Certificate of Judge that Objections established—Patent Law Amendment Act, 1852, s. 43. CROPPER v. SMITH (No. 4)* - W. N. (1885) 111

9. — *Practice—Patents, Designs, and Trade-Marks Act, 1883 (46 & 47 Vict. c. 57), ss. 18, 19—Application for Leave to amend Specification by way of Disclaimer—Appeal to the House of Lords in Action relating to the Patent, after Application for Leave to amend—"Action for Infringement"—Pending Action—"Other Legal Proceeding"—Revocation of Patent.*] In an action for infringement of their patent, the Plaintiffs obtained a judgment against the Defendants S. & H., but on appeal that judgment was reversed as against S., but maintained as against H. (26 Ch. D. 700, 53 L. J. Ch. 891, 51 L. T. 729, 33 W. R. 60). The Plaintiffs afterwards applied under the Patents, Designs, and Trade-marks Act, 1883 (46 & 47 Vict. c. 57), s. 18, for leave to amend their specification by way of disclaimer, which application was opposed by the Defendants. Subsequently, H. lodged an appeal in the House of Lords against the decision of the Court of Appeal. The Comptroller-General then declined to

**PATENT—continued.**

proceed with the Plaintiff's application until the opinion of the Court had been taken under sect. 19 of the Act, as he doubted whether or not the appeal to the House of Lords was a pending litigation within sect. 18, sub-sect. 10 of the Act, and the Plaintiffs thereupon took out a summons that they might be at liberty to disclaim:—

Held, by Chitty, J., that the words "other legal proceeding in relation to a patent" in sect. 18, sub-sect. 10, refer to a proceeding for the revocation of a patent, and that an "action for infringement . . . pending" means an action before judgment, and that being so there was no action for infringement or other legal proceeding pending, and the summons was dismissed. *CROPPER v. SMITH (No. 3)* - 28 Ch. D. 148, [54 L. J. Ch. 287, 52 L. T. 94, 33 W. R. 338]

10. — *Validity—Utility—Specification—Sufficiency—Ambiguity—Chemical Process—Isomeric Substances—Costs—Plaintiff successful in some Issues and not in others—15 & 16 Vict. c. 83, s. 43—Certificate as to Validity.*] Two isomeric forms of a chemical product N., called A. N. and B. N., were known to exist at the date of Plaintiffs' patent, but one only was known in commerce, the other being only mentioned in scientific books. B. N. had only been known for a few years, before which time, and to some extent afterwards, A. N. had only been known as N. The Plaintiffs' specification, which was from its nature addressed to advanced students of organic chemistry, mentioned N. as an important factor in his process, without stating whether it was A. N. or B. N.

Held, by the Court of Appeal (*dissentiente* Baggallay, L.J.), that the specification was insufficient for ambiguity. Decision of Pearson, J. (24 Ch. D. 156, 52 L. J. Ch. 704, 48 L. T. 822, 31 W. R. 913, 1883 Dig. col. 265), reversed.

When the specification of a patent for a chemical process applies equally to several isomeric substances, but one only would produce a useful result, and it can only be ascertained by experiment which that is, the patent is invalid.

Observations on the necessity of proof by the Plaintiff that the invention has been worked, when the utility of the invention and the sufficiency of the specification are in issue.

A patentee failed in establishing the validity of his patent, but succeeded on the issue of infringement:—

Held, that the Plaintiff must pay the general costs of the action, but that the Defendant must pay the costs occasioned by the issue of infringement, the one set of costs to be set off against the other.

A certificate under 15 & 16 Vict. c. 83, s. 43, that the validity of a patent came in question in the action cannot be obtained by the Defendant in an action for infringement. *BADISCHE ANILIN UND SODA FABRIK v. LEVINSTEIN* 29 Ch. D. 366 (C.A.)

**PAUPER.**

See POOR LAW.

POOR-RATE.

— Lunatic—Maintenance—Expenses of.

See LUNATIC. 5.

— Proceedings by.

See PRACTICE—PAUPER.

**PAYMENT INTO COURT.**

See PRACTICE—PAYMENT INTO COURT.

**PAYMENT OUT OF COURT.**

See PRACTICE—PAYMENT OUT OF COURT.

**PEDIGREE**—Evidence—Hearsay.

See EVIDENCE. 6, 7.

**PEERAGE**—Evidence—Marriage, Proof of—Certificate and Relative Affidavit—Admissible Evidence—Legitimation of Children by subsequent Marriage—Marriage on Death-bed—Succession to Real Estate—Scotch Law.] Where a marriage is proved to have been solemnized *de facto* 113 years ago by people who intended that it should be a good marriage, and it is done *bonâ fide* and openly, the maxim *omnia rite acta præsumuntur* applies. The marriage of a domiciled Scotchman legitimates his children born previous to the marriage, and the children's right to succeed to his heritable estate is not prejudiced by the marriage taking place on death-bed.

By the law of Scotland statements of a deceased person in relation to facts, which must presumably have been within his personal knowledge, and to which, if alive, he could have been examined as a witness, may after his death be received as secondary evidence through the medium of writing, or through the medium of a living person who heard the statement. Where, therefore, a member of the family writes a note in a manuscript book to the effect that he has sent original letters to a certain person, and they cannot be found, the copies of such letters, the handwriting, and that the copies were from original letters being proved, the note, and the copies of the letters, are evidence of the truth of the statements within the writer's personal knowledge, and appearing to be so by the letters themselves. So also a statement, whether oral or written, is not vitiated if made with a purpose, where the object was an obvious and legitimate one, and one supporting and not discrediting the presumption of truth. But the statement of a deceased person is not admissible as evidence when its terms, or the circumstances in which it was made, are such as to beget a reasonable suspicion either that the statement was not in accordance with the truth, or that it was a coloured or one-sided version of the truth; and this rule should be applied with greater strictness in criminal cases. *Magistrates of Aberdeen v. More* (1813. Hume's Dec. 502): *Geils v. Geils* (1855. 17 C. of S. Cas. 2nd Ser. 397): *Gordon v. Grant* (13 Ibid. 1): *Madeline Smith* (1857. 2 Irving's Justiciary Rep. 653): *Macdonald v. Union Bank* (1864. 2 C. of S. Cas. 3rd Ser. 963), examined. A minute, of date 1749, from an original unsigned minute book, produced from the proper custody and kept in accordance with a charter of a society, is admissible evidence. A memorandum in a register of a church by its deceased rector made about 108 years ago, though not a contemporaneous entry made in the regular course of the register, is admissible as evidence, and goes to prove that the rector did the things stated in the memorandum. A change of domicile must be a residence *sine animo revertendi*. A temporary residence for the purposes of health, travel, or business does not change the domicile. Also (1) every presumption is to be made in favour of the original domicile;

**PEERAGE**—continued.

(2) no change can occur without an actual residence in a new place; and (3) no new domicile can be obtained without a clear intention of abandoning the old. A., then ill of the malady of which he died, and two days before his death, was married, in 1772 in New York to B. by C., an ordained clergyman of the Church of England, then assistant minister of Trinity Church, New York. There was produced, *inter alia*, in support of the marriage from the custody of the family a certificate signed by C., that he had married A. and B. according to the rites of the Church of England as by law established, and an affidavit, signed by the Mayor of New York, to the effect that C. had made oath of the truth of the statements in the certificate; a will of date anterior to the marriage, by which A. left all his property to B. and the children then born; copies of letters shewing that one of the executors wrote to his executor in England, a brother of A., stating that he was a witness to the ceremony of marriage, that B. signed herself in A.'s surname; that the children were recognised and taken care of by members of the family as A.'s children; and also War Office records shewing that B. received a pension as A.'s widow: *Held*, that there was ample proof of a legal marriage.

*Per Lord Blackburn*:—Where English settlers go out to a colony and settle there they carry with them, so far as may be applicable to their purpose, all the immunities and privileges of the law of England as the law of England was at that time. **THE LAUDERDALE PEERAGE**

[10 App. Cas. 692 (H.L., Sc.)]

2. — Evidence—Family Repute—Statements *Post litem motam*—Scotch Law.] The general rule of the law of Scotland is that hearsay of a deceased person who, if alive, would have been a competent witness, is admissible evidence; but if the fact, to which the deceased testified, was such as he could not have had any special means of knowledge it is not receivable; and this applies to written as well as oral statements.

Deliberate statements made by deceased members of a family, who, if alive, could have been competent witnesses, are generally admissible; but a statement by one member of a family that B., another member, did a certain act, which act, if done at all, was done before the deceased narrator's birth, and there being nothing to shew what were his grounds of knowledge, and the fact not otherwise being proved, is not evidence that the particular act was done by any one; and though the statement cannot be altogether rejected, yet it can only be received as mere family tradition.

When a person leaves his native place and goes to another place to pursue a claim to an estate or title of nobility, and on his return tells certain persons what was said to him by persons connected with the family while so pursuing his inquiries, these statements are not admissible evidence.

Rule laid down in *Dysart's Case* (6 App. Cas. 507) followed. **THE LOVAT PEERAGE**

[10 App. Cas. 763 (H.L., Sc.)]

**PENALTY**—Application of, under local Act—Borough justices.

See LOCAL GOVERNMENT. 3.

**PENALTY—continued.**

— Officer of local board "interested in contract" with board.

See PUBLIC HEALTH ACTS. 11, 12.

— Parliamentary Oaths Act.

See OATH.

— Pretending to be a solicitor.

See SOLICITOR—UNQUALIFIED. 2, 3.

— Statute imposing—Common law right to damages.

See RAILWAY COMPANY. 5.

**PERPETUITY.**

See WILL—PERPETUITY.

— Married woman—Exercise by, of general power.

See POWER. 9.

**PETITION**—Appointment of trustees—Policy of life assurance—Title.

See HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS. 7.

— Bankruptcy.

See BANKRUPTCY—PETITION.

— Reduction of capital—Dispensing with advertisements.

See COMPANY—REDUCTION OF CAPITAL. 1—3.

— Winding-up.

See COMPANY—WINDING-UP. 11, 12.

**PILOT**—Compulsory pilotage—Humber rules.

See SHIP—COLLISION. 7.

**PLAINTIFF.**

See PRACTICE—PARTIES.

**PLANS**—Deposited under Public Health Act—Retention of—Bye-law.

See PUBLIC HEALTH ACT. 13.

**PLEADINGS.**

See PRACTICE—PLEADINGS.

**PLEDGE**—Goods bought on credit—Delivery order—Bill of sale.

See BILL OF SALE—REGISTRATION. 1.

— Indorsement of bill of lading by way of.

See SHIP—BILL OF LADING. 4.

**POACHING**—Search by constable in highway.

See GAME ACTS.

**POLICE**—Retention by, of money found on prisoner.

See PRACTICE—ATTACHMENT OF DEBTS. 3.

**POLICY OF INSURANCE.**

See INSURANCE.

— Charge on—Notice of—Priority.

See MORTGAGE—PRIORITY. 6.

**POLL**—General meeting of company—Articles.

See COMPANY—VOLUNTARY WINDING-UP. 3, 4.

**POOR LAW — Guardians — Disqualification —**

*Salary derived from Poor-rate—5 & 6 Vict. c. 57, s. 14—Clerk of Highway Board—Clerk of School Board—Payment out of Funds raised in a Poor-rate—27 & 28 Vict. c. 101, s. 32—33 & 34 Vict. c. 75.]* The Act 5 & 6 Vict. c. 57, s. 14, which enacts that "no person receiving any fixed salary . . . from the poor-rates in any parish or union, shall be capable of serving as a guardian in such parish or union, does not apply to the clerk of a highway board or of a school board whose salary is paid out of the highway or school board fund, which is a fund supplied from moneys contributed by parishes in pursuance of precepts issued under the Highway Act, 1864, 27 & 28 Vict. c. 101, or the Elementary Education Act, 1870, 33 & 34 Vict. c. 75, respectively.—Judgment of the Queen's Bench Division (14 Q. B. D. 325, 52 L. T. 436, 49 J. P. 279) affirmed. REG. v. RAWLINS. REG. v. DIBBIN (or DIBBEN) 15 Q. B. D. 382, 54 L. J. [Q. B. 557, 50 J. P. 5 (C.A.)]

2. — *Overseers of Parish—Bills in Parliament affecting Parish—Opposition by Overseers—Costs of Opposition.]* A private bill before Parliament provided for the punctual payment of interest on the share capital of the undertaking for which authority was sought by declaring that the overseers of the parish in which the undertaking was situated should, when required to do so, raise as part of the poor-rate money for the payment of such interest. The overseers, with the authority of the vestry, successfully opposed the bill, and in so doing incurred certain expenses which were not immoderate and were allowed by the auditor:—*Held*, reversing the decision of the Queen's Bench Division (11 Q. B. D. 309, 52 L. J. M. C. 128, 49 L. T. 183, 31 W. R. 811, 47 J. P. 741—1883 Dig. col. 268), that the overseers were entitled to charge the expenses so incurred upon the poor-rate. REG. v. WHITE. REG. v. SIBLEY (or SIBLY) - 14 Q. B. D. 358, 54 L. J. M. C. 23—[52 L. T. 116, 33 W. R. 248, 49 J. P. 294 (C.A.)]

3. — *Settlement—Irremovability—Residence—39 & 40 Vict. c. 61, s. 34—Mother and Son—Breach of Residence.]* A. was born in the M. Union, and was a sailor in the merchant service. His mother lived in the S. Union, and A. had since 1876, lived with her between his voyages. When away on a voyage he had always left some of his clothes and other belongings at his mother's house, but he had no separate room or bed there. He used, on returning from a voyage to bring to his mother a portion of his earnings as a contribution towards the expenses of the house. In 1883 he became blind, returned to his mother's house, and then sought parish relief. *Held*, by Stephen and Mathew, J.J. (53 L. J. M. C. 18—50 L. T. 822, W. N. (1884) 135), that, upon the above facts, the justices were right in holding that A. was settled in the M. Union, and had not acquired a settlement by residence in the S. Union. On appeal, this decision was affirmed. MERTHYR TYDVIL UNION GUARDIANS (or REG.) v. STEPNEY UNION GUARDIANS - 54 L. J. M. C. 1—[52 L. T. 959, 49 J. P. 164 (C.A.)]

4. — *Settlement—Constructive Residence—Children—Evidence.]* Upon appeal to the qu



**POOR LAW—continued.**

ter sessions from an order of the justices adjudging that two pauper children under sixteen years of age were settled in a parish within the Holborn Union, in which their father had a settlement at the time of his death, it appeared that seven years before the order the children, then under seven years old, were on the death of their mother placed by their father in the care of K. and his wife, who resided at Chertsey within the Chertsey Union, and lived with them from that time continuously until they became chargeable. After they went to Chertsey the children were visited by their father on three occasions only, and then only for a few hours at a time, but he made a weekly payment for their maintenance which was continued to his death:—*Held*, reversing the decision of Hawkins, J., and Smith, J. (14 Q. B. D. 289, 54 L. J. M. C. 53, 52 L. T. 102, 33 W. R. 344, 49 J. P. 166), that there was evidence on which the justices might find, as they must be taken to have done, that the father had never given up the intention that his children should return to him when he was in a position to receive them, and that therefore there was no ground for quashing the order of the justices. *HOLBORN GUARDIANS v. CHERTSEY GUARDIANS* [15 Q. B. D. 76, 54 L. J. M. C. 137, 33 W. R. 698 (C.A.)]

5. — *Settlement—Derivative Settlement—Pauper above Sixteen*—39 & 40 Vict. c. 61 (*Divided Parishes Act*, 1876), s. 35.] Since 39 & 40 Vict. c. 61 (*Divided Parishes Act*, 1876), s. 35, enacting that “no person shall be deemed to have derived a settlement from any other person . . . except . . . in the case of a child under the age of sixteen, which child shall take the settlement of its father . . . up to that age and shall retain the settlement so taken until it shall acquire another,” paupers who are above the age of sixteen at the time of the inquiry as to their settlement cannot take the settlement of their father. • (An appeal from the above decision was dismissed, on the ground that the case was governed by the decision in *Reg. v. Bridgnorth Guardians* (11 Q. B. D. 314, 52 L. J. M. C. 71, 48 L. T. 600, 31 W. R. 938, 47 J. P. 452). *EDMONTON GUARDIANS (or REG.) v. GUARDIANS OF ST. MARY, ISLINGTON. Re DAVIS* 15 Q. B. D. 95, 339, 54 L. J. [M. C. 110, 146, 53 L. T. 327, 49 J. P. 804 (C.A.)]

— *Pauper lunatic—Maintenance—Expenses of.*  
See LUNATIC. 5.

**POOR-RATE—Appeal—Assessment Committee—Failure to obtain Relief on Objection to Valuation List—Appeal against second Rate**—27 & 28 Vict. c. 39, s. 1.] A person who has once given to the assessment committee notice of objection against a valuation list and failed to obtain such relief as he deems just, may appeal to quarter sessions against any subsequent poor-rate made in conformity with the list, and 27 & 28 Vict. c. 39, s. 1, does not make it a condition precedent of such appeal that previously thereto he should repeat his application to the committee for relief. *REG. v. JUSTICES OF DENBIGHSHIRE* - 15 Q. B. D. 451, [54 L. J. M. C. 142, 53 L. T. 388, 33 W. R. 784, [49 J. P. 788]

2. — *Occupation—School Board—Freeholds*

**POOR-RATE—continued.**

and *Leaseholds of—Elementary Education Act*, 1870 (33 & 34 Vict. c. 75), ss. 18, 19, 21, 22, 53—6 & 7 Will. 4, c. 96, s. 1.] *Held*, affirming the judgment of Coleridge, C.J., Stephen and Mathew, J.J. (53 L. J. M. C. 67, 48 J. P. 549), that a school board formed under the above Act is rateable to the poor-rate in respect both of schools built on land belonging to the board and also of schools rented by the board as tenants, although no profit accrue to the board from such schools. *REG. v. WEST BROMWICH SCHOOL BOARD. WEST BROMWICH SCHOOL BOARD v. WEST BROMWICH OVERSEERS* 13 Q. B. D. 929, 53 L. J. M. C. 153, 52 L. T. [164, 32 W. R. 866, 48 J. P. 808 (C.A.)]

3. — *Occupation—Telephone Company—“Wayleaves”—Overhead Wires and Apparatus attached to Roofs and Chimneys of Houses.*] A telephone company were possessed of an exchange by means of which subscribers could communicate by telephone with each other, and also of wires and telephone apparatus unconnected with the exchange for the use of persons renting them. For the purpose of this business they laid wires from their office to the business premises of their subscribers, and also erected wires for the use of those who rented them. All these wires were overhead wires and were carried from the office of the company to the different premises, being supported and steadied either by poles fixed in the ground, or by being attached to the roofs, chimneys, or walls of some of the buildings over which they passed. The attachments were made in the case of a single wire by an iron spike driven into the building, or by a bolt screwed into the ridge, or by an iron bracket nailed to the corner of the chimney to which the wire was attached, or in the case of a number of wires by means of standards or ridge-saddles attached to the roofs of the buildings and fastened by iron bolts or stays. The consent of the owners or occupiers of the land or buildings was given by agreements in which the company undertook to pay an annual rent and to remove the wires and attachments upon a certain notice. The company had no key of the outside doors, and could only obtain access to the roofs by the permission of the occupiers:—*Held*, affirming the decision of the Queen’s Bench Division (13 Q. B. D. 700, 53 L. J. M. C. 63, 51 L. T. 160, 49 J. P. 53, 1884 Dig. col. 313), that upon these facts there was proof of an occupation of land by the wires of the company, and that they were rateable. *LANCASHIRE TELEPHONE CO. v. OVERSEERS OF MANCHESTER* 14 Q. B. D. 267, 54 [L. J. M. C. 63, 52 L. T. 793, 33 W. R. 203, [49 J. P. 53, 724 (C.A.)]

4. — *Occupation under Statutory Restrictions—Railway Company—Running Powers—Rent fixed by Special Act—Private Act—Construction.*] A private Act of Parliament will be construed more strictly than a public one as regards provisions made by it for the benefit of the persons who obtained it, but, when once the true construction is ascertained, the effect of a private Act is the same as that of a public Act.—The special Act which authorized the making of a railway by the C. Co., provided that the L. Co. should have the right to run their traffic over a part of the line, on payment of a fixed annual rent to the C. L 2

**POOR-RATE—continued.**

Co. The rent was much less than the actual value of the traffic passed over that part of the line by the L. Co.:—*Held*, that the C. Co. could not be rated for poor-rate in respect of that traffic at a higher sum than the fixed rent. *ALTRINCHAM UNION v. CHESHIRE LINES COMMITTEE*

[15 Q. B. D. 597 (C.A.)]

5. — *Procedure—Union Assessment Committee Acts* (25 & 26 Vict. c. 103), s. 19; (27 & 28 Vict. c. 39), s. 1—*Power to amend Valuation List*—“*Notice of objection in manner provided by 27 & 28 Vict. c. 39, with respect to objections*”—*Omission to give Notice of Meeting of Committee to Overseers.*] Under the “*Union Assessment Committee Amendment Act, 1864*,” 27 & 28 Vict. c. 39, s. 1,—which enables the assessment committee to hear objections against a valuation list approved by the committee, and to amend such list, “after notice given at any time in the manner prescribed by 25 & 26 Vict. c. 103, with respect to objections,”—an amendment of the list is valid, although no notice of the meeting of the committee was given to the overseers of the parish to which the list relates as required by 25 & 26 Vict. c. 103, s. 19. *REG. (or G. N. RY. CO.) v. LANGRIVILLE OVERSEERS. REG. v. COPPING SYKE OVERSEERS* - 14 Q. B. D. 83, 54 L. J. Q. B. 124, [52 L. T. 253, 49 J. P. 54]

6. — *Procedure—Valuation (Metropolis) Act, 1869* (32 & 33 Vict. c. 67), s. 47—*Alteration of Value of Hereditament during Year—Provisional List—Default by Overseers in sending Provisional List—Discretion of Overseers.*] Where a requisition is made to the overseers of a parish to make and send to the assessment committee a provisional list under sect. 47 of the Valuation (Metropolis) Act, 1869, containing the gross and rateable value of an hereditament, on the ground that the value has been increased or diminished during the year, the overseers are not bound to comply with the requisition if they are of opinion that no such alteration in value has taken place, and a mandamus will not be granted to compel them to do so. *REG. v. OVERSEERS OF ST. MARY, BERMONDSEY* 14 Q. B. D. 351, 54 L. J. M. C. 68, [33 W. R. 414, 49 J. P. 38]

7. — *Rateable Value—Mersey Docks and Harbour Board—Rateability of Lighthouse vested in and under the Management of the Board—Telegraph Station and Premises—Rateable Value enhanced by reason of Neighbourhood—Merchant Shipping Act, 1854* (17 & 18 Vict. c. 104), s. 430.] The Mersey Docks and Harbour Board were possessed of a tower used as a lighthouse and also as a telegraph station, in respect of which they received tolls from vessels using their docks or entering the port of Liverpool, which tolls were directed by the statutes under which the board derived their authority to be so fixed, that, with the other receipts of the board applicable to conservancy purposes, they should not be higher than were necessary to meet the conservancy expenditure:—*Held*, that, inasmuch as the tower was incapable of profitable occupation, it was not rateable to the relief of the poor.—Two dwelling-houses adjoining the tower were used by the

**POOR-RATE—continued.**

light-keepers, and if not so used in connection with the lighthouse might be let to tenants at a rent, and the rent would be enhanced by the fact that they had been built in the neighbourhood of the tower:—*Held*, that the rateable value of the dwelling-houses must be ascertained with reference to the fact that they had been built in the neighbourhood of the tower.—By Lord Coleridge, C.J., and Mathew, J., sitting as judges of the Queen's Bench Division (51 L. T. 62, 48 J. P. 391, 5 Asp. M. C. 248), the lighthouses which are exempted from rating by sect. 430 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), are those only the superintendence and management of which is by sect. 389 vested in the Trinity House, the Commissioners of Northern Lighthouses, and the Port of Dublin Corporation, and not lighthouses under the control and management of local authorities, such as the Mersey Docks and Harbour Board. *MERSEY DOCKS AND HARBOUR BOARD v. OVERSEERS OF LLANELLIAN*

[14 Q. B. D. 770, 54 L. J. Q. B. 49, 52 L. T. 118, [33 W. R. 97, 49 J. P. 164, 5 Asp. M. C. 358 (C.A.)]

8. — *Rateable Value—Waterworks System in excess of present Requirement—Hypothetical Tenant.*] The S. Waterworks Co. were found to have permanent works which were largely in excess of what was necessary for the business actually done, but were prudent if future business should increase.—*Held*, by Mathew and Smith, JJ., in estimating the rateable value, the excess of present requirements was not to be deducted, nor was it to be entirely allowed, but the valuer was to take into account what a tenant from year to year would pay with the prospect of continuing the occupation after the current year, and while the plant continued to last. *REG. v. SOUTH STAFFORDSHIRE WATERWORKS CO.* - 49 J. P. 645, [50 J. P. 20]

— *Liability of liquidator for.*

*See COMPANY—LIQUIDATOR.* 1.

**PORTIONS.**

*See SETTLEMENT—CONSTRUCTION.* 2, 3.

— *Advancement by.*

*See ADVANCEMENT.*

**POSSESSION**—“*Apparent possession*”—*Absolute bill of sale.*

*See BILL OF SALE—POSSESSION.*

**POST-NUPITAL SETTLEMENT**—*Consideration.*

*See VOLUNTARY CONVEYANCE.* 4.

**POWER**—*Execution—Appointment to second set of Trustees—Wilful Default.*] Property was assigned to trustees on trust for S. for life, and after her death to such of her issue as she should by will appoint; the settlor and S. during their joint lives, and the survivor, had a power of appointment of new trustees and discretion as to the investments, and the settlor had a power of revocation, which however he did not exercise. S. by her will appointed to B. and N. the property as trustees for her son. After her death, the settlor appointed L. and N. trustees of the settlement, and the property was transferred to them. The

**POWER—continued.**

son of S. died, and B. died. L. had allowed the property to remain in the hands of N., who had made away with it.

The persons beneficially entitled under the will of the son recovered judgment for the property made away with against the executor of the son on the ground of wilful default. The executor brought an action against L. for the property as having been lost by his wilful default in allowing it to remain in the hands of N. :—

*Held*, by North, J., that S. had power to appoint the property to trustees for her son; that as he took the whole beneficial interest the trustees of the settlement had no duties to perform except to hand the property over to the surviving trustee of the will; that therefore N. was rightfully in possession of the property, and L. was not liable for having allowed it to remain in the hands of N.

*Re Pocock's Policy* (Law Rep. 6 Ch. 445), *Ferrier v. Jay* (Law Rep. 10 Eq. 550, 39 L. J. Ch. 121), and *Busk v. Aldam* (Law Rep. 19 Eq. 16, 44 L. J. Ch. 119), observed upon.

*Held*, that as the persons entitled under the will of the son of S. had chosen to proceed and recover against his executor, the executor could recover again from the trustee of the settlement if he had been guilty of wilful default. *SCOTNEY v. LOMER* - - 29 Ch. D. 535, 54 L. J. Ch. 558, [52 L. T. 747, 33 W. R. 633]

2. — *Execution—Contingency.* An appointment to an object of a power for life with remainder to his next of kin will take effect if at the death of the tenant for life his next of kin are objects of the power. *Re COULMAN. MUNBY v. ROSS* 30 Ch. D. 186, 55 L. J. Ch. 34, 53 L. T. 560

3. — *Execution—Domicil—Marriage of Englishwoman with Foreigner—Settlement in English Form—Separate Use—Power of testamentary Disposition—Power of Appointment by "writing at any time hereafter"—Exercise by Will previously executed—Wills Act (1 Vict. c. 26), ss. 24, 27.]* On the 20th of December, 1881, prior to the marriage (solemnized in England) of a domiciled Englishwoman (a widow) with a domiciled Spaniard, real estate in England of the intended wife was vested by her in a trustee in fee, to such uses as the intended wife should by deed or will appoint, and subject thereto, to the use of the intended wife, for her separate use. The settlement was made with the approbation of the intended husband, and the deed contained a statement that this approbation was given in consideration of a renunciation the same day executed by the intended wife of any rights which she would otherwise have acquired by her marriage in respect of the property of the intended husband according to the law of Spain. The deed also contained a declaration that it was to take effect and be construed according to the law of England. The marriage was solemnized on the next day. On the 23rd of February, 1882, the wife (being then domiciled in Spain) executed a deed-poll in accordance with the provisions of the settlement, whereby she, in exercise of the power given to her by the settlement, appointed the real estate to the use of herself in fee for her separate use. By another deed executed the same day, to which the husband was a party, she, with

**POWER—continued.**

the consent of the husband, appointed and conveyed, and the husband conveyed, the real estate to the use of a trustee in fee, upon trust for sale and out of the proceeds of sale to pay certain specified debts, and, subject thereto, in trust for such person or persons as the wife "shall at any time or times hereafter by any writing or writings from time to time appoint," and in default of any appointment and subject thereto, in trust for the wife absolutely for her separate use. Under this deed the trustee sold the property and out of the proceeds of sale paid the specified debts, and there then remained a surplus in his hands. The wife died in June, 1882, having by a will, executed immediately after her marriage, and which purported to be made in exercise of the powers reserved to her by her marriage settlement, and of all other powers enabling her, directed, appointed, and declared that the real and personal estate over which she had any disposing power at the time of her death should be held and applied in the payment of certain legacies and annuities, and, subject thereto, she gave four-fifths of her real and personal estate, in case she should leave no children, to her husband absolutely. And she gave the remaining one-fifth of her property, charged with the before-mentioned annuities and legacies, to her brother and sisters, or to the children *per stirpes* of such of them as should die before her leaving children. The testatrix died without issue. The husband survived her. According to the law of Spain under such circumstances two-thirds of her property belonged to her father and mother, notwithstanding that she had left a will :—

*Held*, by Pearson, J., that, whether the will was or was not a good exercise of the power reserved by the deed of February, 1882, it was a valid testamentary disposition by virtue of the limitation in default of appointment to the separate use of the testatrix; that it took effect according to English law, and that the legatees named in it (including the husband) were entitled to the benefits given to them by it.

*Semble*, that on the authority of *Boyes v. Cook* (14 Ch. D. 53, 49 L. J. Ch. 350, 42 L. T. 556, 28 W. R. 754) the will was a valid exercise of the power of appointment given by the deed of February, 1882. *Re HERNANDO. HERNANDO v. SAWTELL* - - 27 Ch. D. 284, 53 L. J. Ch. 865, [51 L. T. 117, 33 W. R. 252]

4. — *Execution—Fraudulent Appointment—Appointment upon a Bargain to settle the appointed Property.]* Real estate was vested in trustees under a will, upon trust as to one moiety to pay the rents to A. for life, and after his death to convey it to and among his children who should attain twenty-one, and if he had no such child then on the trusts of the other moiety, and as to the other moiety on similar trusts for B. and his children. The will empowered the trustees if they should think fit to convey the shares of A. and B., or either of them, to them in fee. In 1882 A. and B., the younger of whom was of the age of sixty-two, and neither of whom had any child, having incumbered their interests, and being pressed by their mortgagees, applied to the trustees to exercise their power of giving

**POWER—continued.**

them their shares of the estate in fee. An arrangement was made between A. and B. and the trustees that the trustees should, in exercise of their power, convey the estate to A. and B., as tenants in common in fee, and that, subject to such mortgages as should be approved by the trustees for raising money to pay off the existing mortgages, a part of the property should be settled upon trusts which gave A. and B. respectively powers of appointment in favour of their respective children and remoter issue, and powers of jointuring their wives. The trustees accordingly conveyed to A. and B., as tenants in common in fee, and the re-settlement, which vested the equity of redemption in new trustees, with a power of sale, upon the trusts which had been arranged, was made by a deed which recited that the trustees had exercised the power on condition that the settlement should be made:—

*Held*, on appeal, that looking at all the circumstances of the case, it was not shewn that the bargain for the re-settlement induced the appointment, or that if the bargain had not been entered into the appointment would not have been made, and that the appointment and settlement were therefore valid, and that the trustees of the settlement could make a good title. *Re TURNER'S SETTLED ESTATES* — — — 28 Ch. D. 205, [54 L. J. Ch. 690, 52 L. T. 70, 33 W. R. 265 (C.A.)]

5. — *Execution—Special Power—Will—Appointment to Persons not objects of Power—Direction to pay Debts of Appointor—Election.* A testatrix had, under the will of a brother who had predeceased her, a power to appoint his property by will among his nephews and nieces and the children or child of deceased nephews and nieces. She, by her will, gave all the real and personal estate of which she might be seised or possessed at the time of her death, or over which she might have any testamentary power of disposition, to trustees, upon trust for sale and conversion, and to stand possessed of the proceeds (which she described as "my said trust funds") upon trust to pay costs and expenses, and to pay her debts and funeral expenses and certain pecuniary legacies, and then upon trust as to two one-fourth parts of her trust funds respectively for persons who were objects of the power; and upon trust as to the other two one-fourth parts respectively for persons who were not objects of the power. And she declared that, in case of the failure of the trusts thereinbefore declared of any of the one-fourth parts of her trust funds, the one-fourth part, or so much thereof of which the trusts should fail, should be held upon the trusts thereinbefore declared of the others or other of the fourth parts of which the trusts should not fail.

*Held*, by Pearson, J., that the testatrix had manifested an intention to exercise the power, and that as to one moiety of the brother's property the power was well exercised.

*Held*, also, that, as to the other moiety of the brother's property, the appointment was invalid, but that, by virtue of the gift "in case of the failure of any of the trusts thereinbefore declared," that moiety went to the persons to whom the first moiety was well appointed, and that

**POWER—continued.**

consequently, no case of election arose. *Re SWINBURNE. SWINBURNE v. PITT* 27 Ch. D. 696, [54 L. J. Ch. 229, 33 W. R. 394]

6. — *Execution—Special Power—Bequest of all Property over which the Testator at the Time of his Death should have "any beneficial disposing power by will" — Remoteness — Intervention of Trustees.* A testator, who had under a settlement a power of appointment over leasehold and other personal estate among his children or grandchildren or other issue, by his will, which contained no reference to the power, gave "all the real and personal estate and effects whatsoever and wheresoever, whether in possession, reversion, remainder, or expectancy, over which at the time of my decease, I shall have any beneficial disposing power by this my will" to trustees, upon trusts partly for persons who were objects of the power, and partly in excess of the power:—

*Held*, by Pearson, J., that the use of the word "beneficial" did not conclusively shew that the testator could not have intended to exercise a power which he could not exercise for his own benefit or the benefit of his estate.

*Ames v. Cadogan* (12 Ch. D. 868, 41 L. T. 211, 27 W. R. 905) discussed.

There being, in the opinion of the Court, upon the will taken as a whole, a sufficient indication of an intention to exercise the power:—

*Held*, that the power was exercised by the will, the trusts, so far as they were in excess of the power, being inoperative.

The testator gave a moiety of the property on trust for his daughters who should survive him, and attain twenty-four, in equal shares. The testator's youngest daughter was more than three years old at the time of his death:—

*Held*, that the appointment was not void for remoteness.

*Held*, also, that the appointed fund ought to be retained by the trustees of the settlement on the trusts of the will, so far as they were valid. *Vox BROCKDORFF v. MALCOLM* — — — 30 Ch. D. 172, [53 L. T. 263, 33 W. R. 934]

7. — *Execution—Special Power—Will—Intention.* If a testator manifests an intention to exercise by his will a special power of appointment, by reason of his making some gifts of property which he describes as "my" property, but the words of which gifts cannot be satisfied unless they pass property subject to the power, the Court will assume that he intended also to exercise the power in the case of other gifts in the will which are capable of passing other property subject to the power, although the words of gift can be satisfied by means of property belonging to the testator himself.

A testator had under a settlement a special power to appoint by will two estates at B. and a S. respectively, and also some shares in the B. Colliery. By his will he made gifts of "my estate at B." and of "my estate at S." and he made another gift of "all my share and interest in the B., H., and W. Colliery Companies." He had no property of his own at either B. or S. but he had some shares of his own in the B. Colliery:—

*Held*, by Pearson, J., that the will operated as

**POWER—continued.**

an exercise of the power, not only as regarded the estates at B. and S., but also as regarded the settled shares in the B. Colliery. *In re WAIT. WORKMAN v. PETGRAVE* - 30 Ch. D. 617, 54 [L. J. Ch. 1172, 53 L. T. 336, 33 W. R. 930]

8. — *Execution—Special Power—Will—General gift and bequest held, not an exercise of Power.* *Re BRADBURY. CARTER v. BRADBURY* [W. N. (1885) 83]

9. — *Execution—Will—Married Woman—General Testamentary Power—Remoteness.* A married woman exercised a general testamentary power:

*Held*, by Chitty, J., that time under the rule against perpetuities ran from her death, and not from the date of the instrument creating the power.

*Re Powell's Trusts* (39 L. J. (Ch.) 188, 18 W. R. 228) discussed and not followed. *ROUS v. JACKSON* - 29 Ch. D. 521, 54 L. J. Ch. 732, 52 L. T. [733, 33 W. R. 773]

— Appointing trustee.

*See* TRUSTEE—APPOINTMENT.

— Appointment to object of, subject to charge — Advancement—Election.

*See* ELECTION. 6.

— Bankruptcy of donee.

*See* BANKRUPTCY—ASSETS. 1.

— Lower Canada, Law of—Illusory appointment.

*See* COLONIAL LAW. 6.

— Of sale—Extinguishment—Disentailing deed.

*See* SETTLEMENT—POWERS.

— Of sale—Mortgage deed.

*See* MORTGAGE—POWER OF SALE.

— Of sale—Settled Land Acts.

*See* SETTLED LAND ACTS.

— Recitals in will—Hotchpot clause—Articles of settlement.

*See* SETTLEMENT—ARTICLES.

**POWER OF ATTORNEY—Recital—Control of operative Part—Complicity in Fraud—Notice.**

The operative part of a power of attorney appointed X. and Y. to be the attorneys of the Plaintiff without in terms limiting the duration of their powers, but it was preceded by a recital that the Plaintiff was going abroad, and was desirous of appointing attorneys to act for him during his absence:—

*Held*, by Kay, J., that the recital controlled the generality of the operative part of the instrument, and limited the exercise of the powers of the attorneys to the period of the Plaintiff's absence from this country.

During the Plaintiff's absence from England, and again after his return, X. and Y., without his knowledge and purporting to act under the power, which empowered them to borrow money on mortgage, borrowed moneys from a bank upon the security of charges on the Plaintiff's property, which moneys they afterwards misappropriated. Upon the occasion of the first advance the power was produced to the bankers and registered by their clerk, but it was not examined by them, nor

**POWER OF ATTORNEY—continued.**

were they aware that the Plaintiff was in England when they made the second advance:—

*Held*, that the charge given during the Plaintiff's absence was valid, and that the charge given after his return was invalid.

The Plaintiff went abroad a second time, and before going gave a fresh power to X. and Y., by which, after referring to the former power, and reciting that he had been in England for a short time, and was returning abroad, he appointed X. and Y. his attorneys, giving them power to borrow money for him with or without giving security. During his second absence, and without his knowledge, X. and Y., who themselves had an overdrawn account with the bankers, borrowed from them further moneys, alleging that it was to enable them to make payments for the Plaintiff; and under the second power of attorney they charged the Plaintiff's property as a security for the loan, applying the borrowed moneys in reduction of their own debt to the bank. Upon this occasion the second power was produced to the solicitor of the bank, but he was unacquainted with the former transactions, and neither the bankers nor any of their clerks were aware that the Plaintiff had been in England:—

*Held*, that in order to make out that the bank were so put upon inquiry as to invalidate the transaction, the Plaintiff must shew that the recitals in the second power were seen by some agent of theirs who knew of the previous transactions, and would by those recitals have been rendered suspicious of the good faith of X. and Y.; and consequently that there having been no such notice or knowledge on the part of the bank, wilful blindness could not be imputed to them, and the last-mentioned charge was valid. *DANBY v. COUTTS & Co.* - 29 Ch. D. 500, 54 L. J. Ch. [577, 52 L. T. 401, 33 W. R. 559]

— Authority to sign bankruptcy petition.

*See* BANKRUPTCY—PETITION. 5

— Equitable mortgage—Agreement to charge.

*See* MORTGAGE—CONTRACT. 1.

**PRACTICE:—**

I. ACCOUNTS.

II. ADMIRALTY.

III. AMENDMENT.

IV. APPEAL.

V. ATTACHMENT OF DEBTS.

VI. ATTACHMENT OF PERSON.

VII. CHAMBERS.

VIII. CHARGING ORDERS (AND STOP ORDERS).

IX. COSTS.

X. DISCOVERY—DOCUMENTS.

XI. DISCOVERY—INTERROGATORIES.

XII. DIVORCE.

XIII. ECCLESIASTICAL.

XIV. EVIDENCE.

XV. INJUNCTION.

XVI. INTERPLEADER.

XVII. JOINDER OF ACTIONS.

XVIII. JUDGMENT.

**PRACTICE—continued.**

- XIX. JURISDICTION.
- XX. MANDAMUS.
- XXI. MOTION FOR JUDGMENT.
- XXII. NEW TRIAL.
- XXIII. NEXT FRIEND.
- XXIV. NOTICE OF MOTION.
- XXV. PARTIES.
- XXVI. PAUPER.
- XXVII. PAYMENT INTO COURT.
- XXVIII. PAYMENT OUT OF COURT.
- XXIX. PLEADINGS.
- XXX. POINT OF LAW.
- XXXI. RECEIVER.
- XXXII. REFEREE.
- XXXIII. SEQUESTRATION.
- XXXIV. STAYING PROCEEDINGS.
- XXXV. THIRD PARTY.
- XXXVI. TRANSFER.
- XXXVII. TRIAL.
- XXXVIII. WRIT.

**I. PRACTICE — ACCOUNTS — Preliminary Accounts and Inquiries—Rules of Supreme Court, 1883, O. XXXIII. r. 2.]** The Plaintiff, an equitable mortgagee, brought an action for foreclosure or sale against several other mortgagees, insisting that under the circumstances she was entitled to priority over the Defendants. The alleged priority of the Plaintiff to the Defendants depended on questions of notice and fraud. On the application of the Plaintiff, Kay, J., on summons under O. XXXIII., r. 2, made an order directing an inquiry what were the respective priorities of the incumbances of the Plaintiff and the respective Defendants, and an account of what was due to the incumbancers respectively. One of the Defendants appealed:—

*Held*, on appeal, that this order must be discharged, for that O. XXXIII., r. 2, was not intended to authorize the sending the whole of the questions in a cause to be tried in Chambers, but only to authorize the Court to direct, before trial, accounts and inquiries which would otherwise have been directed at the trial. *GARNHAM v. SKIPPER* - 29 Ch. D. 566, 52 L. T. 239 (C.A.)

**2. — Preliminary Accounts and Inquiries—Rules of Supreme Court, 1883, O. xv., r. 1; O. LV., r. 10.]** A mortgagee of shares of the proceeds of the residuary real and personal estate of a testator who died in 1872, brought an action in 1884 for the administration of the estate, alleging misapplication by one of the trustees of moneys raised by mortgage of parts of the real estate, and advanced to the same trustee of parts of the testator's estate on equitable mortgage. The Plaintiff applied under O. xv., r. 1, for the common accounts and inquiries in an administration suit, and also for inquiries as to mortgages of the real estate and as to advances to the trustee. *Bacon, V.C.*, refused to make any order:—

*Held*, on appeal, that only common accounts and inquiries could be directed on an application under the rule, and not accounts and inquiries the right to which depended on the Plaintiff establishing a case for them at the hearing, and that

**I. PRACTICE—ACCOUNTS—continued.**

the special inquiries therefore could not be directed.

*Held* further, that O. xv., r. 1, must be read in connection with O. LV., r. 10, which makes it not obligatory on the Court to order a general administration, and that the Vice-Chancellor was right in refusing the common accounts and inquiries in a case where, having regard to the period elapsed since the testator's death it was uncertain whether a general administration order would be found at the hearing to be desirable, and where if the Plaintiff at the hearing established a case of breach of trust, accounts and inquiries would have to be directed, going over in part the same ground as the common accounts and inquiries. *Re GYRON. ALLEN v. TAYLOR* [29 Ch. D. 834, 54 L. J. Ch. 945, 53 L. T. 539, [33 W. R. 620 (C.A.)]

**3. — Rent and "Profits"—Account of—Occupation rent—Profits of Working Colliery. *Re MOREWOOD. ERRINGTON v. MOREWOOD.***

[W. N. (1885) 51 (C.A.)]

— Administration—Limited.

See PRACTICE—CHAMBERS. 3.

— Building society—Order for accounts not referring to settled accounts.

See BUILDING SOCIETY. 1.

— Foreclosure action.

See MORTGAGE—FORECLOSURE. 6, 10, 11.

— Patent—Prolongation—Privy Council.

See PATENT. 4.

— Rents and Profits—Mortgagees in possession.

See MORTGAGE—MORTGAGEE IN POSSESSION. 1.

**II. PRACTICE—ADMIRALTY—Bond for safe Return—Action of Restraint.]** Where an action of restraint, claiming security for the safe return of the ship to a named port within the jurisdiction, is begun by minority owners, and the Defendants give a bond for that purpose, the bond remains in force until the ship returns to that port, and the Plaintiffs are not entitled to institute another action for further security upon the ship's return to another port within the jurisdiction, and if such second action is instituted it will be dismissed with costs. *THE "REGALIA"*

[51 L. T. 904, 5 Asp. M. C. 333]

**2. — Commission on Bail Bond—Damages.]** Commission on bail is not part of the Defendant's costs in an action of salvage or damage, but it may be recovered as damages from the Plaintiff where the arrest of the vessel is made maliciously, or with gross negligence. *THE "COLLINGROVE."*

*THE "NUMIDA"* - 10 P. D. 158, 54 L. J. P. 78, [34 W. R. 156]

**3. — Co-ownership Action—Reference—Registrar's Report—Stay of Execution—Costs.]** A managing owner, who had not delivered accounts for nine years, instituted a co-ownership action for settlement of accounts, and for payment of the balance found due to him, and claimed certain items in respect of materials supplied to the ship for which he had not paid, and for which the Defendants were being sued in the Queen's Bench Division. The Registrar in his report allowed the Plaintiff these items. Upon application to confirm the report, and for judgment, the Court

**II. PRACTICE—ADMIRALTY—continued.**

decreed payment of the amount found due by the registrar, but stayed execution until the Defendants were protected against the claims in the Queen's Bench Division, and refused the Plaintiff the costs of the action upon the ground of delay in rendering his accounts. *THE "CHARLES JACKSON"* - 52 L. T. 631, 5 Asp. M. C. 399

4. — *Costs—Counsel's Fee—Witnesses—Registrar.* In an action for damage by collision, where the damage to one vessel amounted to £20,000, and to the other £2000, three counsel were instructed for the Plaintiffs, the fees marked on their briefs being respectively 75, 50, and 30 guineas. The Court, on appeal from the taxation, allowed these fees, holding them proper in a case of such magnitude.

*Semble*, the cost of detaining witnesses ashore may be allowed, though such witnesses are not called. This is a matter in the discretion of the registrar. *THE "CITY OF LUCKNOW"* 51 L. T. [907, 5 Asp. M. C. 340]

5. — *Costs—Reference.* As by O. LXV., r. 1, of the Rules of the Supreme Court, 1883, the costs of all proceedings are in the discretion of the Court, the general rule of practice in the Admiralty Court as to the costs of references, namely, that when more than a fourth is struck off a claim, each party pays his own costs, and when more than a third the claimant pays the other party's costs, is wrong, and the Court must exercise its discretion according to the circumstances of each particular case.—*The "Empress Eugénie"* (Lush. 140) overruled. *THE "FRIEDEBERG"* [10 P. D. 112, 54 L. J. P. 75, 52 L. T. 837, [33 W. R. 687 (C.A.)]

6. — *Costs—Tender—Salvage—Rules of Court*, 1883, O. LXV., r. 1.] The Defendant in an action for salvage, after action brought tendered and paid into Court £200 in respect of the claim. The Court upheld the tender on an application by the Defendants to be allowed the whole costs of the action:—*Held*, by Butt, J., that the discretion exercised in the Court, by O. LXV., r. 1, ought to be exercised in this case and in similar cases by giving Plaintiffs the costs up to the date of payment into Court, and Defendants those subsequent to that event. But that this general rule would be departed from when salvors unreasonably refuse an offer made before suit:—*Held*, further, that an offer of a sum in respect of salvage services should not include any sum in respect of the Plaintiff's costs.—*The "Thracian"* (L. R. 3 A. & E. 504) not allowed. *THE "WILLIAM SYMINGTON"*

[10 P. D. 1, 54 L. J. P. 4, 51 L. T. 461, [33 W. R. 371, 5 Asp. M. C. 293]

7. — *Evidence—Engineer's Log.* In an action of damage the engineer's log is admissible as evidence against the shipowner by whom the engineer is employed. *THE "EARL OF DUMFRIES"* [10 P. D. 31, 54 L. J. P. 7, 51 L. T. 906, [33 W. R. 568, 5 Asp. M. C. 329, n., 342]

8. — *Inspection by Trinity Masters—24 Vict. c. 10, s. 18.* Before the hearing of an action an application was made under 24 Vict. c. 10, s. 18, by the Plaintiffs, that two Trinity Masters should inspect the lights of the Defendants' ship:—*Held*, by Butt, J., that the application was premature

**II. PRACTICE—ADMIRALTY—continued.**

and ought to be refused. *THE "VICTOR COVACEVICH"* (or "CORACEVICH") 10 P. D. 40, 54 L. J. [P. 48, 52 L. T. 632]

9. — *Judgment by Consent—Limitation of Liability—Right of Claim.* In an action for damages by collision between the owners of the *A.* and the *B.*, the Court, by consent of the parties, made a decree dismissing the action. Subsequently another action was brought by the owners of the cargo on the *A.* against the *B.* in respect of the same collision, and the Court found both vessels to blame. The owners of the *B.* then commenced an action against the owners of cargo on the *A.* for the purpose of limiting their liability in respect of all claims arising out of this collision, and paid the amount of their statutory liability into Court. Subsequently, again by consent of the owners of the *A.* and the *B.*, the assistant registrar rescinded the decree by consent in the first action, and the owners of the *A.* then brought in a claim in the limitation action against the fund in Court. The Registrar held such claim to be inadmissible. On motion to confirm the report:—*Held*, that the report should be confirmed, as the owners of the *A.* and *B.* could not by consent rescind the decree of the Court, and that the decree by consent was a bar to a claim against the fund in Court, as it estopped the owners of the *A.* from bringing any further action against the *B.* Decision of Butt, J. (54 L. J. P. 88), affirmed. *THE "BELLCAIRN"* 10 P. D. 161, 34 W. R. 55 [(C.A.)]

10. — *Jurisdiction—Co-ownership Action—Sale of Ship—Register—Guernsey—Admiralty Court Act*, 1861 (24 Vict. c. 10), s. 8.] The Admiralty Division has no jurisdiction over an action *in rem*, instituted under the above section, and claiming an account of the earnings and sale of a ship when the ship is registered at the port of Guernsey, and not at any port in England or Wales. *THE "ROBINSONS"* AND *THE "SATELLITE"* - 51 L. T. 905, 5 Asp. M. C. 338

11. — *Limitation of Liability—Action of.* In an action of limitation of liability, where the Plaintiffs have paid into Court, or are willing to pay in, £8 per ton in respect of damage to ship, goods, and merchandise, but seek in respect of the life claims to pay into Court, or give bail for, an amount less than their total liability under the Merchant Shipping Act, the Court, before fixing such amount, will require the Plaintiffs to state on affidavit the names of the persons killed and injured, their condition in life, the number of those who are legally entitled to claim, the number of claims that have been settled, and the amounts paid in settlement. *THE "DIONE"*

[52 L. T. 61, 5 Asp. M. C. 347]

12. — *Limitation of Liability—Loss of Life—Damage to Ship, Goods, and Merchandise.* In an action for limitation of liability, where it appeared that all the claims in respect of loss of life had been settled, Butt, J., ordered that, upon payment in of £8 per ton, all persons having any claim, either in respect of loss of life or damage to ship, goods, or merchandise, should be restrained from bringing any action respecting the collision. *THE "FOSCOLINO"* - 52 L. T. 866

13. — *Restraint—Bail Bond—Form.* In

**II. PRACTICE—ADMIRALTY—continued.**

an action of restraint the bail bond should not be given to pay what may be adjudged against the Defendant in an action, but simply for the appraised or agreed value of the Plaintiff's shares, in case the ship does not return to the particular port named in the bond. THE "ROBERT DICKINSON" (or "DICKENSON"). THE "GLANNIBANTA"

[10 P. D. 15, 54 L. J. P. 5, 52 L. T. 55,  
[33 W. R. 400, 5 Asp. M. C. 341]

14. — *Sale—Co-ownership*—24 Vict. c. 10, s. 8.] The Court will not exercise the power of sale conferred on it by 24 Vict. c. 10, s. 8 (2), by ordering the sale of a ship, unless a part owner—whether he be the owner of a minority or majority of shares—makes out a very strong case.—Continued and embittered disagreements between two part owners were held not to constitute sufficient reason for the interference of the Court. THE "MARION" 10 P. D. 4, 54 L. J. P. 8, 51 L. T. 906, [33 W. R. 432, 5 Asp. M. C. 339]

15. — *Sale of Ship and Cargo—Collision—Freight.*] Where an action *in rem* against ship and freight for collision, in which the Defendant's ship was held solely to blame, the ship being still under arrest with the cargo on board was ordered to be sold. The Court on motion directed the marshal to discharge the cargo, to retain the same in his custody as security for payment of the landing and other charges and freight, if any, due from the owners or consignees of the cargo in respect of the same, and that in default of any application for the delivery of the cargo within fourteen days, the marshal should be authorized to sell such part of the cargo as might be necessary to pay the said charges and freight, if any, due. THE "GETTYSBURG" — 52 L. T. 60, 5 Asp. M. C. 347

16. — *Security for Damages—Foreign Government—Counter-claim*—24 Vict. c. 10, s. 34.] The Court has jurisdiction by 24 Vict. c. 10, s. 34, to order a Plaintiff in an action for damage by collision to give security for damages to a Defendant who brings a counter-claim. The Court can exercise this power when such Plaintiff is a foreign sovereign whose ship cannot be arrested. THE "NEUBATTLE" — 10 P. D. 33, 54 L. J. P. 16, [52 L. T. 15, 33 W. R. 318, 5 Asp. M. C. 356 (C.A.)]

17. — *Stay of Proceedings—Lis alibi pendens—Action in rem—Bail.*] The Plaintiffs, the owners of the German vessel *J.*, commenced an action *in rem* against the Danish vessel *C.* in an Admiralty Court in Holland, in respect of a collision on the high seas, and the *C.* was arrested in this action. The Plaintiffs' agent in Holland and the Dutch Court allowed the *C.* to be released on the underwriters of the *C.* guaranteeing to the parties interested to the amount of 175,000 gulchen, for the compensation which the *C.* might eventually have to pay by legal decision in Holland. While these proceedings were pending in Holland, the Plaintiffs began an action *in rem* in England in respect of the same collision, and the *C.* was arrested in the English action. On a motion by the Defendants for the release of the *C.*—the Plaintiffs on such motion expressing their willingness to cease proceedings in Holland and pay the

**II. PRACTICE—ADMIRALTY—continued.**

costs—Sir James Hannen held that the *C.* ought to be released, as it was *prima facie* oppressive to institute an action in another Court in respect of the same subject-matter when there was no evidence that the Court, in which the action was first brought, would not do full justice to the Plaintiffs:—*Held*, on appeal, by Baggallay and Fry, L.J.J., that the decision of Sir James Hannen was right, for bail being the equivalent of the ship, and it having been given in Holland, an action in England against the ship should not be allowed to proceed at the same time as the Dutch action:—*Held*, also, that if the guarantee given in Holland was not equivalent to bail, but was a private agreement, the arrest of the ship in England was against good faith:—*Held*, by Lord Esher, M.R., that the decision of Sir James Hannen was wrong, because though it was not *prima facie* oppressive to institute an action in a foreign and in an English Court in respect of the same collision, it would be oppressive if bail were given in both Courts, but in this case the guarantee not being equivalent to bail, the Plaintiffs had not, so good a remedy in Holland as in England, and were therefore entitled to bring an action in the English Admiralty Court.—*McHenry v. Lewis* (22 Ch. D. 397, 52 L. J. Ch. 325, 47 L. T. 549, 31 W. R. 305) approved and applied. THE "CHRISTIANSBOURG" 10 P. D. 141, [54 L. J. P. 84, 53 L. T. 612 (C.A.)]

18. — *Warrant—Notice—Telegram.*] When the marshal sends by telegram to his substitute at an outport notice of the issue of a warrant, and such substitute communicates it to the master of the ship against which it is issued, it is a contempt of Court to move the ship from the place where it is lying. THE "SERAGLIO" — 10 P. D. 120, [54 L. J. P. 76, 52 L. T. 865, 34 W. R. 33]

19. — *Warrant of Arrest—Service—City of London Court—London (City) Small Debts Extension Act, 1852 (15 & 16 Vict. c. lxxvii., s. 18—County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 23.]* A warrant of arrest in an action *in rem* was issued from the City of London Court directed to the high bailiff, and others the bailiffs thereof, but was, without authority from the Court, served by a clerk in the high bailiff's office:—*Held*, affirming the decision of the judge of the City of London Court, that this was not a proper service of the warrant. *Per* Sir James Hannen:—"Any officer" mentioned in 31 & 32 Vict. c. 71, s. 23, means any officer duly authorized by the Court. *Per* Butt, J.:—"That it means any officer whose ordinary duty is to serve processes, or one duly authorized so to do. The "PALOMARES" — 10 P. D. 36, 54 L. J. P. 54, [52 L. T. 57, 33 W. R. 616, 5 Asp. M. C. 343]

20. — *Writ in rem—Service—Action by default—Rules of Supreme Court, 1883, O. IX., rr. 11, 12; O. XIII., rr. 12, 13; O. LXVII., r. 14.]* In an action *in rem* the writ of summons was served in the manner provided by O. IX., r. 12, no appearance was entered, and the action came on for judgment by default under O. XIII., rr. 12, 13. The affidavit of service of the writ was made by the solicitor's clerk who had served such writ:—*Held*, by Butt, J., that service of a writ *in rem* by a solicitor or his clerk, and not by the marshal or



**II. PRACTICE—ADMIRALTY—continued.**

his substitute, was a valid service, and that the affidavit was sufficient. *THE "SOLIS"* 10 P. D. 62, [54 L. J. P. 52, 52 L. T. 440, 33 W. R. 659, [5 Asp. M. C. 368

- Assessors—Judge differing from.  
See SHIP—COLLISION. 15.
- Damages—Commission for bail.  
See SHIP—COLLISION. 3.
- Jurisdiction—Action *in rem* for damages under Lord Campbell's Act.  
See JURISDICTION.
- Jury, right to.  
See PRACTICE—TRIAL. 4.
- Tender—Plea of, without payment into Court.  
See SHIP—SALVAGE. 1.

**III. PRACTICE—AMENDMENT—Pleadings—**

*After Evidence put in—O. XXVIII., r. 1.* Leave to amend pleadings ought to be granted, even at the last moment, where it is necessary to enable the Court to finally dispose of the questions between the parties, if the applicant is acting *bona fide* and his opponent can be fully indemnified against any injury occasioned to him; but such leave is an indulgence, and ought only to be granted on terms.

*Tildesley v. Harper* (10 Ch. D. 393; 27 W. R. 249) followed. *Re TRUFORT. TRAFFORD v. BLANC* — 53 L. T. 498, 34 W. R. 56

- Bankruptcy petition—Joining parties.  
See BANKRUPTCY—PETITION. 4.
- Counter-claim—Claim for recovery of land.  
See PRACTICE—JOINDER OF ACTIONS. 2.
- Error in order—Order passed and entered—Costs.  
See PRACTICE—JUDGMENT. 3, 4.
- Parties.  
See PRACTICE—PARTIES.
- Pleadings—Action for specific performance—Claim for damages.  
See SPECIFIC PERFORMANCE. 2.
- Revising barrister's power of.  
See PARLIAMENT. 2, 7, 8.
- Valuation list—Notice of meeting of assessment committee.  
See POOR-RATE. 5.
- Writ—Claim—Adding co-plaintiff—Stranger suing on covenant.  
See HUSBAND AND WIFE—SEPARATION DEED. 3.
- Writ—Claim for recovery of land joined with other claims.  
See PRACTICE—PLEADINGS. 7.
- Writ—Indorsement—Claim for recovery of land.  
See PRACTICE—JOINDER OF ACTIONS. 1.

**IV. PRACTICE—APPEAL—***Appeal to House of Lords—Bankruptcy of Appellant.* Where an appeal involves a question of the appellant's status, the House will allow it to be proceeded with, notwithstanding the bankruptcy of the appellant. *G. v. M. (or GORDON v. MERRICKS)* [10 App. Cas. 171, 53 L. T. 398, 12 C. of S. Cas. (H.L.) 36 (H.L., Sc.)

2. — *Case stated under 12 & 13 Vict. c. 45,*

**IV. PRACTICE—APPEAL—continued.**

s. 11—*Supreme Court of Judicature Act, 1873, ss. 19, 45.* An appeal lies to the Court of Appeal from the decision of the Divisional Court upon a case stated under 12 & 13 Vict. c. 45, s. 11, on an appeal from an order of the justices to the quarter-sessions, it not being a decision of the Divisional Court on an appeal from petty or quarter sessions within the meaning of s. 45 of the Judicature Act, 1873, and it being an "order" within s. 19 of that Act. *HOLBORN GUARDIANS v. CHERTSEY GUARDIANS.* 15 Q. B. D. 76; 54 L. J. M. C. 137; [33 W. R. 698 (C.A.)

3. — *Costs—Note of Judgment of Court below.* A decision on the construction of a will was reversed on appeal, but the Court, on the ground that it was not furnished with any information as to the reasons given by the judge for his decision, refused to make any order as to the costs of the appeal. *Re MCCONNELL. SAUNDERS (or SANDERS) v. MCCONNELL* 29 Ch. D. 76; 52 L. T. 80; [33 W. R. 359 (C.A.)

4. — *Costs—Variation on Point not adjudicated upon in Court below.* Unless a substantial variation is made in the order appealed from, the fact that a substantial question has been raised will not of itself be enough to allow the question of costs to be gone into on the appeal. A variation in an order on a point not adjudicated upon in the Court below is not sufficient to entitle the appellant to his costs. *GAMES v. BONNOR* [54 L. J. Ch. 517; 33 W. R. 64 (C.A.)

5. — *"Criminal Cause or Matter"—Information by Attorney-General to recover Penalty—Trial at Bar—Motion for New Trial on Ground by Misdirection and Misreception of Evidence—Notice of Motion—Judicature Act, 1873 (36 & 37 Vict. c. 66) ss. 19, 47.]* By Brett, M.R., and Lindley, L.J., Cotton, L.J., doubting an information at the suit of the Attorney-General to recover penalties under s. 5 of the Parliamentary Oaths Act, 1866, from a member of Parliament for voting without having taken the oath of allegiance required by that statute, as amended by the Promissory Oaths Act, 1868, is not a "criminal cause or matter" within the meaning of the Supreme Court of Judicature Act, s. 47, and an appeal may be brought from any order or judgment therein of the High Court to the Court of Appeal:—By Brett, M.R., on the ground that the information is in its nature a civil proceeding, and therefore, that an appeal lies under the Supreme Court of Judicature Act, 1873, s. 19:—By Lindley, L.J., on the ground that even although the information may be to some extent of a criminal nature, nevertheless before the passing of the Supreme Court of Judicature Acts, 1873, 1875, an appeal would have lain under the Crown Suits Act, 1865 (28 & 29 Vict. c. 104), ss. 31, 34, 35, from a decision of the Court of Exchequer to the Court of Exchequer Chamber, and that the Supreme Court of Judicature Acts, 1873, 1875, do not take away any right of appeal existing before the passing of those statutes.—*Semble*, by Brett, M.R., that even if the information could be regarded as a criminal proceeding, nevertheless an appeal would lie, for by the Supreme Court of Judicature Act, 1873, s. 47, the right of appeal is taken away only in the case of indictments, of

**IV. PRACTICE—APPEAL—continued.**

criminal informations for indictable misdemeanors filed in the Queen's Bench Division, and of criminal proceedings before justices.—An appeal lies to the Court of Appeal from any order or judgment made or given by the Queen's Bench Division either during, or afterwards with respect to, a trial at bar of a civil proceeding, and whether or not the appeal is brought from a decision upon a motion for a new trial on the ground of misdirection or wrongful reception of evidence; but the appeal must be brought on by notice of motion, an *ex parte* application for a rule nisi to the Court of Appeal being irregular. *ATTORNEY-GENERAL v. BRADLAUGH* 14 Q. B. D. 667, [54 L. J. Q. B. 205, 52 L. T. 589, 33 W. R. 673, [49 J. P. 500 (C.A.)]

6. — *Cross Notice—Withdrawal of Appeal—O. LVIII., r. 6.*] When a Respondent under Order LVIII., r. 6, has given notice that he will on the hearing of an appeal contend that the decision of the Court below should be varied, and the Appellant subsequently withdraws his appeal, such notice entitles the Respondent to elect whether to continue or withdraw his cross-appeal. If he continues his cross-appeal the Appellant has the right to give a cross notice that he will bring forward his original contention on the hearing of the Respondent's appeal *THE "BEESWING." PARR v. OWNERS OF THE "BEESWING."* 10 P. D. 18, [54 L. J. P. 7, 51 L. T. 883, 33 W. R. 319, [5 Asp. M. C. 335 (C.A.)]

7. — *For Costs—Order on Solicitor personally to pay Costs—Judicature Act, 1873, s. 49.*] An order that the costs of an application at chambers on behalf of a client shall be paid by the solicitor personally cannot be costs left to the discretion of the Court within sect. 49 of the Judicature Act, 1873, unless the solicitor has been guilty of misconduct or negligence, and, therefore, an appeal lies from such order without leave as to whether there has been such misconduct or negligence.—Decision of the Queen's Bench Division (11 Q. B. D. 373, 52 L. J. Q. B. 759, 48 L. T. 765, 31 W. R. 919, 47 J. P. 630, 1883 Dig. col. 211) reversed. *Re BRADFORD, THURSBY & FARISH* 15 Q. B. D. 635, [53 L. J. Q. B. 65, 50 L. T. 170, 32 W. R. 238]

8. — *For Costs—Administration Action by Residuary Legatee—Rules of the Supreme Court, 1883, O. LXV., r. 1—Pending Cause—Rules of Court, 1875, O. LV., r. 1.*] Order LXV., r. 1, of the Rules of the Supreme Court, 1883, directing that the costs of all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or a judge, applies, in the case of causes and matters pending on the 24th of October, 1883, when those rules came into operation, only to the costs of proceedings taken on and after that day; and the costs incurred in proceedings taken in such causes and matters before that day, although not adjudicated upon until afterwards, are not within that rule.

In an action for administration by one of several residuary legatees, all the proceedings except those on subsequent further consideration were taken before Order LXV., r. 1, came into operation, though the costs were not adjudicated upon until the order on further consideration which was made afterwards:—

**IV. PRACTICE—APPEAL—continued.**

*Held*, that an appeal would lie as to the costs of such prior, though not as to the costs of such subsequent, proceedings. *Farrow v. Austin* (18 Ch. D. 58, 45 L. T. 227) followed. *Re McCLELLAN. McCLELLAN v. McCLELLAN* 29 Ch. D. 495, [54 L. J. Ch. 659, 52 L. T. 741, 33 W. R. 898 [(C.A.)]

9. — *For Costs—Breach of Injunction.*] Where the jurisdiction of a judge to inflict costs on a party arises from his being guilty of breach of an injunction or other misconduct, an appeal lies as to costs, although the judge makes no order except that the party shall pay costs.—*Witt v. Corcoran* (2 Ch. D. 69) followed. *STEVENS v. METROPOLITAN DISTRICT RAILWAY COMPANY* [29 Ch. D. 60, 54 L. J. Ch. 737, 52 L. T. 832 [33 W. R. 531 (C.A.)]

10. — *For Costs—Discretion of Judge—Action dismissed for want of Prosecution—4 & 5 Anne, c. 3, s. 23—42 & 43 Vict. c. 59, ss. 2, 4—Repeal with Qualification—Rules of Supreme Court, 1883, O. LXV., r. 1.*] The statutable right of a Defendant to the costs of an action in the Chancery Division which had been dismissed for want of prosecution was repealed by 42 & 43 Vict. c. 59, which repeals so much of 4 & 5 Anne, c. 3, as gives such costs, and though the practice in accordance with such statutable right, and as regulated by O. xxxiii., r. 10, of the Chancery Consolidated Orders of 1860, was preserved by s. 4 of 42 & 43 Vict. c. 59, yet O. LXV., r. 1, of the rules of 1883 has changed such practice, so that the costs of a Defendant where such action has been dismissed for want of prosecution are now in the discretion of the judge, and therefore his order as to such costs is by sect. 49 of the Judicature Act, 1873, not subject to appeal. *SNELLING v. PULLING* [29 Ch. D. 85, 52 L. T. 335, 33 W. R. 449 (C.A.)]

11. — *For Costs—Special Leave—Judicature Act, 1873, s. 49.*] Where an appeal from an order as to costs which are left by law to the discretion of the judge is brought by leave of the judge under the 49th section of the Judicature Act, 1873, the Court of Appeal will still have regard to the discretion of the judge, and will not overrule his order unless there has been a disregard of principle or misapprehension of facts. *Re GILBERT. GILBERT v. HUDLESTONE (or HUDLESTONE)* 28 Ch. D. 549, 54 L. J. Ch. 751, [52 L. T. 8 (C.A.)]

12. — *From Judge of Assize—Judicature Act, 1873, ss. 19, 29, 50.*] The Court of Appeal has jurisdiction to hear an appeal from a refusal of a judge of assize to grant liberty for the issue of a commission for the examination of a witness abroad. *MELLOR, CUNNINGHAM & Co. v. ROYAL EXCHANGE SHIPPING Co. ARMSTRONG v. THE SAME.* [W. N. (1885) 172 (C.A.)]

13. — *From Judgment by Default—Rules of Supreme Court, 1883, O. xxxvii., r. 33.*] Although the Court of Appeal has jurisdiction to hear a direct appeal from a judgment by default, such appeals will not be encouraged. The proper course for a party against whom judgment has been given by default is to apply to the judge who heard the

**IV. PRACTICE—APPEAL—continued.**

cause to set aside the judgment and to re-hear the cause. *VINT v. HUDSPITH (or HUDSPETH)* (No. 1)

[29 Ch. D. 322, 54 L. J. Ch. 844, 52 L. T. 741,  
[33 W. R. 738 (C.A.)]

14. — *Notice of—Service on Solicitor—Order to pay Plaintiff instead of paying into Court—Continuance of Authority of Solicitor.* By order on further consideration the Defendant was ordered to pay money into Court, which was then to be carried to the credit of an action for administering the estate of a testator whose executrix was the Plaintiff in the present action. The Defendant went abroad without complying with the order. On appeal the order was varied by ordering the Defendant to pay the money to the Plaintiff, who was then to pay it into Court in the administration action, such an order being capable of being better enforced against the Defendant's property than the order as originally framed.

The notice of appeal was served on the Defendant's solicitors, who stated that they had ceased to act for him, but they were still his solicitors on the record:—

*Held*, that as the order on further consideration had not been worked out, they still represented him, and that service of the notice on them was good service. Whether the solicitors on the record do not continue to represent their client until the expiration of the time allowed for appealing, *quære*. *LADY DE LA POLE v. DICK*

[29 Ch. D. 351, 54 L. J. Ch. 940, 52 L. T. 457,  
[33 W. R. 585 (C.A.)]

15. — *Time—Originating Summons—Dismissal of—O. LVIII., r. 15; O. L., r. 1; O. II., r. 1; O. LV., r. 3; O. LXXI., r. 1—Judicature Act, 1873, s. 100.* An originating summons taken out under O. LV., r. 3, is a civil proceeding commenced otherwise than by writ in manner prescribed by a rule of Court, and is consequently an action within the definition of that word in sect. 100 of the Judicature Act, 1873. Therefore an order made upon such a summons is appealable at any time within one year from its date. *Re FAWCETT. GALLAND v. BURTON*

30 Ch. D. 231, 54 L. J. Ch. 1131,  
[53 L. T. 271, 34 W. R. 26 (C.A.)]

— Bankruptcy.

*See* BANKRUPTCY—APPEAL.

— By person not a party—Residuary legatee.

*See* EXECUTOR—ACTIONS. 2.

— County court—New trial—Time.

*See* COUNTY COURT. 1.

— Divorce—New trial—Time.

*See* PRACTICE—DIVORCE. 8.

— From chambers.

*See* PRACTICE—CHAMBERS. 5—7, 9, 10.

— Interpleader issue.

*See* PRACTICE—INTERPLEADER.

— Municipal election petition—Special leave.

*See* MUNICIPAL CORPORATION. 1.

— Poor-rate—Assessment committee—Sessions

*See* POOR-RATE. 1.

— Privy Council—Criminal appeal—Leave.

*See* COLONIAL LAW. 3.

— Security for costs of.

*See* PRACTICE—COSTS. 20—22.

**IV. PRACTICE—APPEAL—continued.**

— Stay of proceedings pending.

*See* PRACTICE—STAYING PROCEEDINGS.  
2—4.

**V. PRACTICE—ATTACHMENT OF DEBTS—**

*Examination of Garnishee—O. XLII., r. 32—O. XLV., r. 3.* A garnishee against whom an order absolute has been made and execution issued under O. XLV., rr. 3, 4, is a "debtor" within O. XLII., r. 32, and the judgment creditor is entitled to an order for the oral examination of the garnishee touching his means. So *held*, by Mathew and Smith, JJ. *COWAN & Co. v. CARLILL*

[52 L. T. 431, 33 W. R. 583, W. N. (1885) 76]

2. — *Judgment—Lapse of Six Years since—Garnishee Order to pay—O. XLII., rr. 6, 8, 22, 23—O. XLV., r. 1.* A garnishee against whom proceedings under O. XLV. have been duly taken, may be ordered to pay to a judgment creditor a debt due from such garnishee to the judgment debtor, although more than six years have elapsed since the judgment. *FELLOWS v. THORNTON*

[14 Q. B. D. 335, 54 L. J. Q. B. 279, 52 L. T. 389,  
[33 W. R. 258]

3. — *Money found on Prisoner—Retention of money by Police after Conviction—Custodia legis—Attachment by Judgment Creditor—O. XLV., r. 1.* Money in the possession of a prisoner which is taken possession of by the police upon his apprehension, and retained by them after his conviction, does not render the police debtors to the prisoner, and is not a debt due from them to the prisoner which can be attached by a judgment creditor of the prisoner by garnishee proceedings under the above rule. *BICE v. JARVIS* — 49 J. P. 264

— Charging order for costs—Garnishee summons—Priority.

*See* SOLICITOR—LIEN. 5.

— Garnishee order served on drawer of cheque.  
*See* BANKER. 3.

**VI. PRACTICE—ATTACHMENT OF PERSON—**

*Affidavit of Service—Notice of—Irregularity—O. LII., r. 4.* *Re WHITHAM. WHITHAM v. WHITHAM* — — — W. N. (1885) 176, 179

2. — *Indorsement on Order—Order for Production of Documents—Service on Solicitor—Rules of Supreme Court, 1883, O. XXXI., rr. 21, 22, 23; O. XLI., r. 5; O. LII., r. 4.* O. XLI., r. 5, which requires any order to bear an indorsement warning the party bound by it of the consequences of disobedience, applies to an order for discovery of documents of which service on the solicitor is permitted. And a writ of attachment cannot be issued against a person who disobeys such an order unless the copy served on his solicitor bore the required indorsement.

A party whose solicitor was served with such an order without the required indorsement took out a summons for further time:—

*Held (dissentiente Lindley, L.J.), that he did not thereby waive the irregularity of the service.*

The decision of Chitty, J., reversed.

The affidavit in support of a motion for attachment was not served with the notice of motion as it ought to have been under O. LII., r. 4, but was served two clear days before the day named in the notice of motion for moving the Court:—

**VI. PRACTICE—ATTACHMENT OF PERSON—continued.**

*Held*, by Chitty, J., that this was not such an irregularity as made the notice invalid. *HAMPDEN v. WALLIS* (No. 1) 26 Ch. D. 746, 54 L. J. Ch. 83, [50 L. T. 515, 32 W. R. 808 (C.A.)]

— Administrator—Default.

See ADMINISTRATOR. 4.

— Contempt of Court—County Court sitting in bankruptcy.

See COUNTY COURT. 3.

— Proceedings in Divorce Court.

See PRACTICE—DIVORCE. 2, 3.

**VII. PRACTICE—CHAMBERS—Adjournment of Summons to Judge.]** An adjournment to the Judge will not be granted unless an application is made to the Chief Clerk, at the time when the summons is heard by him, either for an adjournment or for time to consider whether an adjournment shall be asked for. If no application is made to the Chief Clerk at the time, the order can only be altered by means of a motion in Court to discharge it.—If an order is made against a party properly served in his absence, the result is the same as if, being present, he does not ask for an adjournment. Time to consider whether an adjournment shall be asked for will be granted, if an application for it is made at the hearing in a proper case—as if only a clerk who is not fully instructed is present, or in a country case when reference to the country solicitor is necessary. PRACTICE - - - W. N. (1884) 218

2. — Administration—Infants—O. LV., rr. 3, 10.] Discussion of the principles on which the Court will act in the exercise of its discretion under O. LV., r. 10, whether or not to make a general order for administration. *Re WILSON. ALEXANDER v. CALDER* 28 Ch. D. 457, 54 L. J. [Ch. 487, 33 W. R. 579]

3. — Administration—Cestui que trust—Residuary Legatee—Infant Plaintiff—Limited Accounts and Inquiries—Costs—Rules of Supreme Court, 1883, O. LV., rr. 3, 4, 10; O. LXV., r. 1.] A party interested in the estate of a deceased person, even though that party be an infant, is not entitled, as a matter of course, to an administration judgment at the expense of the estate. Having regard to Rules of Supreme Court, 1883, O. LV., r. 10, a party interested is only entitled to an administration judgment where there are questions which cannot be properly determined except by an administration action; but the Court has power under that rule to order a limited administration only, that is, to direct particular accounts and inquiries, if it sees that the questions can thus be properly determined, the object of the rule being to prevent general administration except in cases of necessity; and the Court, in the exercise of its discretion as to costs under O. LXV., r. 1, will order the Plaintiff—if an infant, then the next friend—to pay the costs of any unnecessary or improper administration proceedings.

Order of Kay, J., varied.

*In re Wilson* (supra) considered. *Re BLAKE. JONES (or PUGHE-JONES) v. BLAKE* 29 Ch. D. 913, [54 L. J. Ch. 880, 53 L. T. 302, 33 W. R. 886 (C.A.)]

**VII. PRACTICE—CHAMBERS—continued.**

4. — Administration—Chief Clerk—Jurisdiction—General Administration—O. LV., rr. 4, 15.] The proviso in O. LV., r. 15, that no judgment or order for general administration shall be made under r. 4 of that order by the Chief Clerk, extends to orders for general administration of trusts constituted by deed. *DAVIDSON v. YOUNG* [54 L. J. Ch. 747]

5. — Appeal from—Hearing Fee—Order as to S. C. Fees, 1884, Sched., art. 52.] The above article, which provides for the payment of a fee of £2 on entering or setting down a cause or matter for trial or hearing, does not apply to appeals from Chambers.

*Ex parte Hasker* (col. 319) distinguished. *Ex parte DUDLEY. Re A SOLICITOR* 33 W. R. 750, [W. N. (1885) 138]

6. — Chief Clerk—Appeal from—Time—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 98, 124—G. O. 1862, rr. 31, 74—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 50—O. LVIII., r. 15.] Where the Chief Clerk had refused a summons by an official liquidator for rectification of the register, but no certificate had been drawn up, and the Chief Clerk had refused an application made three months afterwards to adjourn the summons into Court:—*Held*, by Bacon, V.C., that the Court would be guided by the analogy of the rules, which fix twenty-one days as the limit for appealing, and that the liquidator could not, by a fresh summons, obtain the opinion of the Judge upon the Chief Clerk's refusal of the first summons. *Re NORWICH EQUITABLE ASSURANCE CO. BRASNETT'S CASE* (No. 2) - - - 51 L. T. 620, [33 W. R. 270, W. N. (1884) 223]

7. — Chief Clerk's Certificate—Application to vary—O. LV., rr. 70, 71.] On an application upon the further consideration of an action for an extension of the time, under O. LV., r. 71, for applying to vary a finding in a Chief Clerk's certificate:—*Held*, by Pearson, J., that the applicant should take out a summons for the purpose. *Re DOVE. BOUSFIELD v. DOVE* 27 Ch. D. 687, [53 L. J. Ch. 1099, 33 W. R. 197]

8. — Legacy Duty Act (36 Geo. 3, c. 52), s. 32—Application under—Fund exceeding £1000—O. LV., r. 2, sub-ss. 1, 4.] *Re BARKER (AN INFANT)* - - - W. N. (1884) 237

9. — Motion to Discharge Order made in—Time—O. LVIII., r. 15.] *Held*, by Kay, J., that a motion made to discharge an order made in Chambers, more than twenty-one days after such order was pronounced, was too late, and must be refused with costs. *Re HARDWIDGE* 52 L. T. 40, [W. N. (1884) 204]

10. — Motion to vary Order made in—Time—O. LVIII., r. 15.] By an order made in Chambers upon the application of the Defendant (the executor) in an administration action, of which a creditor had obtained the conduct, taxation of the costs was directed, and an application of the funds in Court in payment, with liberty to apply in Chambers as to getting in an outstanding asset:—

*Held*, by Chitty, J., that this order, though final as to the rights of the creditor, was interlocutory for the purposes of appealing, and within

**VII. PRACTICE—CHAMBERS—continued.**

the limit of twenty-one days provided by the above rule. *Re LEWIS. LEWIS v. LEWIS*

[34 W. R. 40, W. N. (1885) 185]

11. — *Summons for Determination of Questions at issue in Action—Rules of Supreme Court, 1883, O. LV., r. 10.* Except to the extent to which special provisions are made by the rules, as, for instance, by O. xv., the Plaintiff in an action is not entitled to take out a summons for the determination of the questions which are at issue in the action, and which will properly be decided at the trial. *BORTHWICK v. HANSFORD*

[28 Ch. D. 79, 54 L. J. Ch. 569, 33 W. R. 161]

— Accounts and inquiries.

See PRACTICE—ACCOUNTS.

— Administration — Originating summons — Costs.

See EXECUTOR—ACTIONS. 5.

— Administration summons—Question of law.

See LIMITATIONS, STATUTES OF. 9.

— Application for leave to petition in *forma pauperis*.

See PRACTICE—PAUPER. 1.

— Cross-examination—Expenses.

See PRACTICE—EVIDENCE. 2.

— Foreclosure—Accounts and inquiries.

See MORTGAGE—FORECLOSURE. 11.

— Infant—Order on trustees as to maintenance—Jurisdiction.

See INFANT. 7.

— Originating summons—Appeal—Time.

See PRACTICE—APPEAL. 15.

— Payment out — Purchase-money — Lands compulsorily purchased.

See LANDS CLAUSES ACT. 10.

— Summons—Contributory.

See COMPANY—VOLUNTARY WINDING-UP. 2.

— Title—Evidence of—Costs.

See VENDOR AND PURCHASER—TITLE. 8.

— Vesting order.

See TRUSTEE ACTS. 7.

**VIII. PRACTICE — CHARGING ORDERS (and STOP ORDERS)**—*Injunction to restrain Transfer of Stock—Notice in Lieu of Distringas—Married Woman—Undertaking as to Damages*—5 Vict. c. 5, ss. 4, 5—O. XLVI., rr. 2—10.] A motion was brought on behalf of a married woman for an injunction to restrain the Bank of England, until further order, from permitting the transfer of a sum of New 3 per Cent. Annuities, standing in the names of the executors of a testator, and to which the married woman claimed to be beneficially entitled. An injunction was granted for a fortnight on the usual undertaking of the married woman to be answerable in damages. The registrar refused to draw up the order on the sole undertaking of the married woman as to damages:—

*Held*, by Pearson, J., that the sole undertaking of the married woman must be accepted. *Re PRYNNE* - 53 L. T. 465, W. N. (1885) 144

— Stop order—Incumbrancers—Priority.

See MORTGAGE—PRIORITY. 5.

**IX. PRACTICE — COSTS**—*Action of Contract which could not have been brought in County Court—Judgment for Sum not exceeding £50*—O. LXV., r. 12.] By O. LXV., r. 12, in actions founded on contract in which the Plaintiff recovers by judgment or otherwise a sum (exclusive of costs) not exceeding £50, he shall be entitled to no more costs than he would have been entitled to had he brought his action in a county court, unless the Court or a judge otherwise orders:—*Held*, by Mathew and Smith, JJ., that this rule does not apply to actions which could not have been brought in a county court. *SAYWOOD v. CROSS*

[14 Q. B. D. 53, 54 L. J. Q. B. 17, 51 L. T. 801, 33 W. R. 135]

2. — *Action remitted for Trial to County Court*—O. LXV., rr. 1, 4.] By O. LXV., r. 1 (Rules of the Supreme Court, 1883), the costs of and incident to proceedings in the Supreme Court are to be in the discretion of the Court or Judge, subject to a proviso where an action is tried with a jury. By rule 4 of the same Order, where an action is ordered to be tried in a county court under 19 & 20 Vict. c. 108, s. 26, the costs of the action are subject to these rules to follow the event, unless by the registrar's certificate of the result of the trial, it appears that the county court judge was of opinion that the question ought to be referred to a judge of the High Court, in which case no costs are to be recovered unless ordered by the Court or a judge.—Where an action has been ordered to be tried in a county court under 19 & 20 Vict. c. 108, s. 26, and has been so tried there, the High Court retains its power under O. LXV., r. 1, of dealing with the costs of the action, notwithstanding rule 4 of that order, and the absence in the registrar's certificate of any expression of opinion by the county court judge as provided for by that rule. *EMERY (or EMERY) v. SANDS* - 14 Q. B. D. 6, 54 L. J. Q. B. 82, [51 L. T. 641, 33 W. R. 187 (C.A.)]

3. — *Counsel's Fees—Refreshers—Appeal—No vivâ voce evidence or cross-examination—Discretion of Taxing Master*—O. LXV., r. 27 (48).] *EDGINGTON v. FITZMAURICE* (No. 2)

[33 W. R. 911 (at p. 913), W. N. (1885) 170]

4. — *Counsel's Fees—Refreshers—Discretion of Taxing Master*—O. LXV., r. 27 (48).] The Taxing Master has a discretion, in the special circumstances of a case, to disallow refresher fees. *SMITH v. WILLS* - 53 L. T. 386, 34 W. R. 30, [W. N. (1885) 178]

5. — *Counter-claim—Set-off—Cross-liquidated demands—Form of judgment—Costs, where balance under £20 is recovered.*] In an action brought for a liquidated demand of £25 for work and labour, the Defendant pleaded a cross-liquidated demand as a counter-claim, and the jury found for the Plaintiff on the statement of claim for £22 8s 6d., and for the Defendant on the counterclaim for £9 13s., and the judge at the trial directed judgment to be entered for the Plaintiff for £12 15s. 6d., with his costs.

The Taxing Master allowed the Defendant full costs, and, on motion to review his taxation, the Exchequer Division declared the Plaintiff entitled to his full costs, and directed judgment to be entered that the Plaintiff do recover from the Defendant £22 8s. 6d. in respect of the cause of

**IX. PRACTICE—COSTS—continued.**

action in the statement of claim with costs, and that the Defendant do recover from the Plaintiff £9 13s. in respect of the cause of action in the counter-claim with costs; that the said sums and costs so recovered should be set off, and the party in whose favour there should be a balance should recover from the other such balance:—

*Held*, reversing the order of the Exchequer Division, that one judgment should be entered for the Plaintiff for £12 15s. 6d., and that the Plaintiff, having recovered less than £20, was entitled to no costs, the parties being resident in the same civil-bill jurisdiction.

In such a case a true set-off is not deprived of its real character of a defence by being described and pleaded as a counter-claim. *RYAN v. FRASER* [16 L. R. Ir. 253 (C.A.)]

6. — *Court Fees*—"Entering cause or matter for trial or hearing"—Rule ordering Justice to hear application for Summons—Order as to Supreme Court Fees, 1884, Schedule 52.] Under the order as to Supreme Court Fees, 1884, Schedule 52—which directs that a fee of £2 shall be paid "on entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any court in London or Middlesex, or at any assizes"—such fee is payable though the matter for hearing does not arise in an action, as in the case of a rule nisi against a justice under 11 & 12 Vict. c. 44, s. 5. *Ex parte HASKER* - - - 14 Q. B. D. 82, [54 L. J. M. C. 94]

7. — *Disallowance of—Delay—Solicitor—Administration*—O. LXV., r. 11.] In an administration action a delay of more than eleven years having occurred between the original order directing the usual inquiries and the filing of the certificate, Kay, J., under the above rule, referred the matter to a Taxing Master for inquiries, and directed him to make such disallowance of costs in respect of the delay as he might think fit, and to call on the solicitor having conduct of the action to shew cause why that disallowance should not be made. *FURNESS v. DAVIS* 51 L. T. 854, [33 W. R. 320, W. N. (1885) 14]

8. — *Double Costs*—5 & 6 Vict. c. 97—8 & 9 Vict. c. 100, s. 105—O. LXV., r. 1.] O. LXV., r. 1, does not apply to costs which are given by statute as a matter of right.

In an action brought for anything done in pursuance of 8 & 9 Vict. c. 100, a successful Defendant is entitled to double costs as a matter of right.

Judgment of Mathew and Wills, JJ., affirmed. *HASKER v. WOOD* - - - 54 L. J. Q. B. 419, [33 W. R. 697, W. N. (1885) 116 (C.A.)]

9. — *Reference—Claim and Counter-claim for Debt—Arbitration*—"Costs of cause, reference, and award, shall abide the event"—Award—Entry of Judgment—Costs where the Plaintiff succeeds on Claim, and the Defendant on Counter-claim.] A Plaintiff having claimed for goods sold and delivered, and for commission, and the Defendants having counter-claimed for moneys collected by the Plaintiff on the Defendants' account and for work and labour, the action was referred to an arbitrator under an order of reference whereby "the costs of the cause, and the costs of the refer-

**IX. PRACTICE—COSTS—continued.**

ence and award shall abide the event." The arbitrator found the issues on the claim in favour of the Plaintiff, and awarded him a sum of money in respect thereof, and found the issues on the counter-claim in favour of the Defendants, and awarded to them a sum of money in respect thereof. After deducting the sum found for the Plaintiff from the sum found for the Defendants, a balance of £97 was due to the Defendants:—*Held*, that the word "event" in the order of reference must be construed distributively, and that judgment must be entered for the Defendants, who were entitled to the costs of the action, reference, and award, but that the Plaintiff was entitled to the costs of the issues found in his favour. —*Baines v. Bromley* (6 Q. B. D. 691) explained. *LUND v. CAMPBELL* - - - 14 Q. B. D. 821, [54 L. J. Q. B. 281, 33 W. R. 510 (C.A.)]

10. — *Reference of Cause and all Matters in difference—Costs of Action and reference to abide Event*—"Event" construed distributively.] An action and all matters in difference were referred, the costs of the cause, reference, and award to abide the event:—*Held*, on the authority of *Ellis v. Desilva* (6 Q. B. D. 521, 50 L. J. Q. B. 328), that the word "event" must be construed distributively; and that consequently, upon an award by which the arbitrator decided in the Plaintiff's favour upon the claim in the action, but in the Defendant's favour upon a matter in difference not raised in the action, the Plaintiff was entitled to the costs of the action and the Defendant to the costs of the matter on which he had succeeded.—*Gribble v. Buchanan* (18 C. B. 691, 26 L. J. (C.P.) 24) not followed. *HAWKE v. BREAR* [14 Q. B. D. 841, 54 L. J. Q. B. 315, 52 L. T. 432, [33 W. R. 613]

11. — *Security for—Dismissal for want of Prosecution*—O. XXXVI., r. 12.] The Plaintiff in an action having omitted to give notice of trial within the proper time, the Defendants moved under the above rule to dismiss the action for want of prosecution, or that the Plaintiff might be ordered to give security. The Plaintiff had failed to pay the costs of certain interlocutory proceedings, and there was evidence of his being in insolvent circumstances, and that the action was really for his solicitor's benefit:—

*Held*, that, as the Court had under the above rule, a discretion, under the special circumstances of the case, an order requiring the Plaintiff to give security might be made. *WILMOTT (or WILLMOTT) v. FREEHOLD HOUSE PROPERTY CO.* (No. 3) - - - 52 L. T. 743, 33 W. R. 554, [W. N. (1885) 77 (C.A.)]

12. — *Security for Costs—Interpleader by Sheriff—Defendant in Issue liable to give Security for Costs.*] In an interpleader issue directed upon an application by a sheriff, who has received a notice of a claim to goods seized by him under a writ of *feri facias* in execution of a judgment, both the Plaintiff and the Defendant in the issue are really in the position of the Plaintiffs in an ordinary action, and, therefore, the Defendant in the interpleader issue may be ordered to give security for costs in any case in which a Plaintiff may be so ordered, and the rule, that a Defendant cannot be compelled to give security for costs,

**IX. PRACTICE—COSTS—continued.**

does not apply.—*Williams v. Crosling* (3 C. B. 957) followed.—*Belmonte v. Aynard* (4 C. P. D. 221, 352) distinguished. *TOMLINSON v. LAND AND FINANCE CORPORATION* - 14 Q. B. D. 539, [53 L. J. Q. B. 561 (C.A.)]

13. — *Security for—Married Woman suing without Husband or Next Friend—No Separate Estate—Married Women's Property Act, 1882, s. 1, sub-s. 2—O. XVI., r. 16.* A married woman being empowered by sect. 1, sub-sect. 2, of the Married Women's Property Act, 1882, to sue as a *feme sole*, may sue without her husband or a next friend, and cannot be ordered to give security for the costs of the action, even although she have at the time of action no separate estate, and there be nothing upon which, if she fails, the Defendant can issue available execution. *Re ISAAC (or ISAACS). JACOB v. ISAAC* 30 Ch. D. 418, 54 L. J. Ch. 1136, [53 L. T. 478, 33 W. R. 845 (C.A.)]

14. — *Security for—Married Woman—Action to recover Separate Estate—Joinder of Husband as Co-Plaintiff—Married Women's Property Act, 1882, s. 1. Re ROBINSON. PINDAR v. ROBINSON* - - - W. N. (1885) 147

15. — *Security for—Petitioner out of Jurisdiction—Taxation of Bill of Costs.* A petitioner, in a matter under the Solicitors' Acts, resident out of the jurisdiction, ordered to give security for the costs in the matter, and a balance, claimed to be due to the Respondent. *Re CORNWALL*

[15 L. R. Ir. 144]

16. — *Security for—Plaintiffs out of Jurisdiction—One of several Plaintiffs coming within Jurisdiction before Appeal.* An action was brought by a mercantile firm, all the members of which were in America, against a firm at Manchester. The Defendants put in a defence and counter-claim, and then applied to the Judge for an order for the Plaintiffs to give security for costs. The Plaintiffs filed an affidavit stating that they with other persons carried on business at Manchester, and that the firm there had assets amounting to £2000. The Judge refused the application. On the appeal, the Plaintiffs produced an affidavit stating that since the order one of the Plaintiffs had come to Manchester for the purpose of carrying on the action:—

*Held*, by the Court of Appeal, that the affidavit as to the property of the Plaintiffs in England was ambiguous and was not sufficient to support the order in the Court below.

But *held*, that as one of the Plaintiffs had come to England since the order was made, although for a temporary purpose, the Defendants were not entitled to security for costs, and therefore the order must be affirmed.

*Redondo v. Chaytor* (4 Q. B. D. 453) followed. *EBRARD v. GASSIER (or GARSIER)* 28 Ch. D. 232, [54 L. J. Ch. 441, 52 L. T. 63, 33 W. R. 287 (C.A.)]

17. — *Security for—Counter-claim—Defendant out of Jurisdiction.* Where a claim and counter-claim arise out of different matters, so that the counter-claim is really in the nature of a cross action, the Defendant, if he is residing out of the jurisdiction, may be required to give security for the Plaintiff's costs of the counter-claim, and, if the only dispute remaining arises on the counter-claim, it is beyond doubt right that he

**IX. PRACTICE—COSTS—continued.**

should be so required. Decision of Grove and Denman, JJ. (53 L. T. 150) affirmed. *SYKES v. SACERDOTI* - - - 15 Q. B. D. 423, [54 L. J. Q. B. 560, 53 L. T. 418 (C.A.)]

18. — *Security for—Trustee of Bankrupt's Estate suing in his Official Name—Insolvency—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 83—Rules of Supreme Court, 1883, O. XVII., rr. 4, 5.* A trustee of the property of a bankrupt brought an action in his official name, his own name not being mentioned. The Defendants moved for security for costs on the ground of his insolvency, and of his suing solely in his official name. Evidence was given that he had been bankrupt ten years previously, and had also compounded with his creditors four years before the action was brought:—

*Held*, affirming the decision of Pearson, J., (53 L. J. Ch. 1105, 51 L. T. 195, 32 W. R. 1017, 1884 Dig., col. 339), that the evidence of the insolvency of the Plaintiff was insufficient; and that the fact of his suing solely in his official name was not a ground for ordering him to give security for costs.

When a trustee in bankruptcy suing in his official name is removed, and a new trustee appointed, the new trustee must obtain an order to continue the action, and give notice thereof to the other parties, under O. XVII., rr. 4, 5.

Whether a trustee in bankruptcy suing in his official name would, if insolvent, be ordered to give security for costs, *quære*.

*Denston v. Ashton* (L. R. 4 Q. B. 590, 38 L. J. Q. B. 254, 17 W. R. 968) questioned. *POOLEY'S TRUSTEE IN BANKRUPTCY v. WHETHAM*

[28 Ch. D. 38, 54 L. J. Ch. 182, 51 L. T. 608, [33 W. R. 423 (C.A.)]

19. — *Security for—Trustee in Liquidation—Insolvency.* The Court will not require security from a Plaintiff who sues as the trustee in a liquidation for the benefit of the estate, even though he be insolvent.

*Denston v. Ashton* (L. R. 4 Q. B. 590, 38 L. J. Q. B. 254, 17 W. R. 968) approved. *COWELL v. TAYLOR* - - 31 Ch. D. 34, 55 L. J. Ch. 92, [53 L. T. 483, 34 W. R. 24]

20. — *Security for Costs of Appeal.* There is no general rule that an insolvent Appellant will be exempted from giving security for the costs of the appeal because the case involves a question of law which has not been previously considered by a Court of Error.

*Rourke v. White Moss Colliery Company* (1 C. P. D. 556) explained. *FARRER (or FARRAR) v. LACY, HARTLAND, & Co.* (No. 2) 28 Ch. D. 482, [54 L. J. Ch. 808, 52 L. T. 38, 33 W. R. 285 (C.A.)]

21. — *Security for Costs of Appeal—Dismissal of Appeal for want of Security.* Where an order has been made for the Appellant to give security for the costs of an appeal, if he does not give it within a reasonable time, the Court will dismiss the appeal without giving further time, unless there are extenuating circumstances.

As a general rule a period of three months is more than a reasonable time. *WASHBURN AND MOEN MANUFACTURING CO. v. PATTERSON*

[29 Ch. D. 48, 54 L. J. Ch. 643, 52 L. T. 705 [33 W. R. 403 (C.A.)]

**IX. PRACTICE—COSTS—continued.**

**22.** — *Security for Costs of Appeal from Order for Security for Costs.* WILLMOTT v. FREEHOLD HOUSE PROPERTY CO. (No. 2)

[W. N. (1885) 65 (C.A.)]

**23.** — *Summons to stay Execution pending Appeal.* Where a contributory of a company was ordered to pay a certain sum of money to the liquidator, the contributory took out a summons to stay execution pending an appeal, and stay of execution was ordered upon the terms of his paying the money and £50 for costs into Court, no order being made as to the costs of the summons to stay. The appeal was dismissed with costs, but no reference was made as to the costs of the summons to stay, and the Taxing Master disallowed the costs of that summons. On a summons to review the taxation, *Held*, by Bacon, V.C., that the contributory was ordered to pay the £50 into Court to satisfy such costs as the Court should think he ought to pay, and that the costs of the summons to stay, being caused by the appeal, must be paid out of the £50 in Court, and that the Court had jurisdiction at any time to make such order. *Re* BRIGHTON LIVERY STABLES CO. - 52 L. T. 745

**24.** — *Taxation—Inspection of Documents—Discretion of Master—O. LXV., r. 27 (xvii.)—Refreshers—Witnesses ready but not called—Second Opinion on Evidence.* As between party and party no costs can be allowed in respect of notices to inspect documents, or of attendances for the purpose of such inspection, at the office of the solicitor to whose client the documents belong. The discretion given to the Taxing Master by the above sub-rule (repeated from R. S. C., 1875 (costs) sched. r. 15) applies only to taxation of costs as between solicitor and client.

*Brown v. Sewell* (16 Ch. D. 517, 44 L. T. 41) explained.

*Held*, also (1), that the fact that witnesses were not called was not of itself a sufficient reason for disallowing the costs of taxing their proofs and of service of *subpoenas* on them; (2) that refreshers should be allowed, but the Taxing Master should be at liberty to reduce the original fee if it, with the refresher, made too large a fee for the case; (3) that the costs of taking counsel's further opinion on evidence after the Defendant had put in a rejoinder should be allowed. *WICKSTEED v. BIGGS* - 54 L. J. Ch. 967, 52 L. T. 428

**25.** — *Transfer of Action—Motion for—Correspondence before Motion—O. XLIX., r. 1.* The Defendant in an action having applied under the above rule for the transfer of an action from one Judge of the Chancery Division to another, the Lord Chancellor made an order directing the transfer and that the Respondent should pay the costs of the motion. Before the notice of motion had been given, the Defendant had written to the Respondent asking whether he would consent to the transfer, which he refused to do. In taxing the costs under the Lord Chancellor's order, the Taxing Master disallowed the costs of this correspondence:—*Held*, by Kay, J., on a summons to review the taxation, that the Taxing Master was right. *NORTON v. FENWICK* .. 54 L. J. Ch. 632, [52 L. T. 341, W. N. (1885) 60]

**IX. PRACTICE—COSTS—continued.**

— Action by debenture-holders—Insufficient estate—Priority.

*See* COMPANY—DEBENTURES. 1.

— Administration—Unnecessary or improper proceedings—Infant.

*See* PRACTICE—CHAMBERS. 3.

— Administration action.

*See* EXECUTOR—ACTIONS. 1, 3—7.

EXECUTOR—ADMINISTRATION. 1, 5.

— Admiralty action.

*See* PRACTICE—ADMIRALTY. 2—6.

— Appeal—Costs of.

*See* PRACTICE—APPEAL. 3, 4.

— Appeal for costs.

*See* PRACTICE—APPEAL. 7—11.

— Arbitrator's power over—Reference of "all matters in difference."

*See* ARBITRATION. 3.

— Bankruptcy proceedings.

*See* BANKRUPTCY—COSTS.

— Bill of costs.

*See* SOLICITOR—BILL OF COSTS.

— Case stated.

*See* JUSTICES. 2.

— Copyright—Innocent infringer—Notice of action.

*See* COPYRIGHT. 2.

— Correction of error in order—Order passed and entered.

*See* PRACTICE—JUDGMENT. 3, 4.

— Counsel—Appeal—Third counsel.

*See* SOLICITOR—BILL OF COSTS. 23.

— Cross-examination on affidavit—Production of deponent.

*See* PRACTICE—EVIDENCE. 2—4.

— Divorce—Variation of settlements.

*See* PRACTICE—DIVORCE. 12.

— Ejectment—Forfeiture by non-payment of rent.

*See* LANDLORD AND TENANT—RE-ENTRY 2.

— Foreclosure action.

*See* MORTGAGE—FORECLOSURE. 1, 11.

— Higher scale—City of London Court—Jurisdiction.

*See* CITY OF LONDON COURT.

— Interest on.

*See* INTEREST. 1.

— Lands Clauses Act.

*See* LANDS CLAUSES ACT. 5—7.

— *Lis pendens*—Vacating registration of—Application by person not a party.

*See* LIS PENDENS.

— New South Wales—Action of slander.

*See* COLONIAL LAW. 11.

— Non-payment of—Attachment for.

*See* PRACTICE—DIVORCE. 2.

— Partition action.

*See* PARTITION. 1.

— Patent—Action for infringement.

*See* PATENT. 5, 10.



**IX. PRACTICE—COSTS—continued.**

— Payment into Court by Defendant—Acceptance by Plaintiff.

See PRACTICE—PAYMENT INTO COURT. 3—5.

— Petition for supervision order—Separate appearance of company.

See COMPANY—VOLUNTARY WINDING-UP. 8.

— Priority—Winding-up—Action by landlord.

See COMPANY—VOLUNTARY WINDING-UP. 7.

— Reference — Special referee — Consent of parties—Terms.

See PRACTICE—REFEREE.

— Security for—Divorce—Wife's Costs.

See PRACTICE—DIVORCE. 3.

— Security for—Multiplicity of actions.

See PRACTICE—STAYING PROCEEDINGS. 1.

— Security for—Remission of action to County Court—"Visible means."

See COUNTY COURT. 7.

— Settled Land Act—Sale by tenant for life—Mortgagees.

See SETTLED LAND ACTS. 16.

— Solicitor's charge for.

See SOLICITOR—LIEN.

— Specific performance—Agreement for lease.

See LANDLORD AND TENANT. 2.

— Taxation—Action in *forma pauperis*—Solicitor—Counsel.

See PRACTICE—PAUPER. 2.

— Taxation—Counsel's fees—Witnesses.

See PRACTICE—ADMIRALTY. 4.

— Trustee's costs and charges.

See TRUSTEE—COSTS AND CHARGES.

— Vendor and Purchaser—Possessory title—Proof of title in Chambers.

See VENDOR AND PURCHASER—TITLE. 8.

— Winding-up.

See COMPANY—WINDING-UP. 1—3, 11.

**X. PRACTICE—DISCOVERY—DOCUMENTS—**

*Affidavit—Sufficiency of—Interrogatory.*] After a Defendant has made a sufficient affidavit of documents the Plaintiff will not be allowed to administer to him a general roving interrogatory as to documents in his possession, the effect of which would be to compel the Defendant to make a further affidavit as to documents.

There may possibly be cases in which, after a sufficient affidavit as to documents has been made, the Court will allow the Plaintiff to deliver an interrogatory as to some specific document or documents, but whether this shall be allowed is a matter within the discretion of the Judge in each particular case, and, though his decision can be appealed from, the Court of Appeal will not readily reverse it.

*Jones v. Monte Video Gas Company* (5 Q. B. D. 556, 42 L. T. 639) explained. *HALL v. TRUMAN, HANBURY, & Co.* 29 Ch. D. 307, 54 L. J. Ch. 717, [52 L. T. 82, 586 (C.A.)]

2. — Documents held in right of Another, Production of, when ordered—Company—Volun-

**X. PRACTICE—DISCOVERY—DOCUMENTS—continued.**

*tary Winding-up—Liquidator—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 155.] In an action on a promissory note, made by the Defendant as security for the repayment of monies due to the Plaintiffs from a limited company, the Defendant objected to produce documents relating to the matters in question in the action, being the banker's pass-book and directors' minute-book of the company, on the ground that they were in his custody only as liquidator in the voluntary winding-up of the company. The company had been dissolved before the application for the discovery of documents was made, but no resolution had been passed under the Companies Act, 1862, sect. 155, for the disposal of the documents belonging to it:—*Held*, that the Plaintiffs were entitled to the inspection of the documents, inasmuch as the Defendant had them in his absolute control.—Decision of the Queen's Bench Division (15 Q. B. D. 7, 33 W. R. 751) affirmed. LONDON AND YORKSHIRE BANK *v.* COOPER

[15 Q. B. D. 473, 54 L. J. Q. B. 495]

3. — Husband and Wife—*Affidavit as to Documents.*] A husband and wife sued as co-Plaintiffs in respect of an alleged breach of trust by the trustees of their marriage settlement. The wife had a life estate for her separate use, and sued without a next friend. An order was made that the Plaintiffs should file an affidavit stating "whether they or either of them" had in the possession or power "of them or either of them," any documents relating to the matters in question. They filed an affidavit admitting the possession of various documents, which they scheduled, and going on to say, "we have not now, and never had, in our possession, custody, or power, or in the possession, custody, or power of any other person or persons on our behalf, any deed, &c., other than and except the documents set forth in the said schedule":—

*Held* (reversing the decision of Bacon, V.C.), that the Plaintiffs must be ordered to file a further and better affidavit, for that an affidavit relating only to documents in the joint custody of the husband and wife did not comply with the order, and that the order was right in requiring them to answer as to documents in the possession of either of them. FENDALL *v.* O'CONNELL (No. 2)

[29 Ch. D. 899, 54 L. J. Ch. 756, 52 L. T. 553, [33 W. R. 619 (C.A.)]

4. — Next Friend—*Affidavit*—O. XXXI., r. 12.] The Court refused either to order the next friend of an infant Plaintiff to make an affidavit as to documents, or stay the action till he made such affidavit.

*Higginson v. Hall* (10 Ch. D. 235) dissented from. DYKE *v.* STEPHENS (No. 1) 30 Ch. D. 189, [55 L. J. Ch. 41, 53 L. T. 561, 33 W. R. 932]

5. — Opening settled Account—*Allegations of Fraud—Rules of Supreme Court, 1883, O. XIX., r. 6; O. XXXI., rr. 12, 20.*] The Plaintiffs employed the Defendants to purchase goods, as their agents, at the lowest possible prices. The Plaintiffs sued for an account, and in their statement of claim alleged that the Defendants had purchased goods at prices higher than the current prices, and had secretly received from the vendors

**X. PRACTICE — DISCOVERY — DOCUMENTS—**  
*continued.*

allowances or commissions. The charges against the Defendants were stated in general terms, no particulars being mentioned. The Defendants denied the charges, and pleaded a settled account. The Plaintiffs applied for production of documents:—

*Held*, by Cotton, L.J., affirming the decision of Bacon, V.C. (32 W. R. 311); *dissentiente*, Fry, L.J., that the Plaintiffs were not bound to give particulars of fraud under O. XIX., r. 6, before obtaining discovery of documents:—

*Held*, by Fry, L.J., that the allegations of fraud in the pleadings not being sufficient to enable the Plaintiffs to open a settled account, discovery ought to be refused until the allegations had been made sufficient. *WHYTE v. AHRENS* — 26 Ch. D. 717, 54 L. J. Ch. 145, 50 L. T. 344, 32 W. R. 649 (C.A.)

6. — *Privilege—Documents privileged in Previous Action by Plaintiff against a Third Party—O. XXXI., rr. 12-14.* An order having been made for discovery of documents by the Plaintiff in an action, the Plaintiff stated on affidavit that, among other documents relating to the matters in question in the action, he had in his possession certain documents partially prepared by his solicitors in an action previously brought by him against one D. (a person other than the Defendant) for future use in carrying on the said action, but which were, in fact, never completed or used owing to such action not proceeding in consequence of D.'s death, and that the whole of the said documents were of a private and confidential nature between counsel, solicitor, and client:—*Held*, that the documents were privileged from discovery in the action.—*Bullock v. Corry* (3 Q. B. D. 356, 47 L. J. Q. B. 352) followed. *PEARCE v. FOSTER* [15 Q. B. D. 114, 54 L. J. Q. B. 432, 52 L. T. 886, 33 W. R. 919, 50 J. P. 4 (C.A.)]

7. — *Privilege — Arbitration — Shorthand Notes of Evidence and Arguments—Transcript, Production of.* The corporation of P. took compulsorily some of R.'s land, and at an arbitration to ascertain the sum to be paid, R. claimed a right of way over other land to a river, and such alleged right had to be considered in regard to the sum to be assessed.

R. employed a shorthand writer to take notes of the evidence and arguments, and afterwards had them transcribed for his own purposes.

Subsequently he brought an action for a mandatory injunction to compel the corporation to remove materials which they had put on the land over which he claimed the right of way. The relevancy of the notes was admitted. On motion by the corporation for the production of the transcript, R. objected on the ground that it was privileged, as the notes were taken at his expense and in anticipation of other proceedings against the corporation:—

*Held*, by Kay, J., that the transcript of the notes was not privileged, and that it must be produced. *RAWSTONE (or RAWSTORNE) v. PRESTON CORPORATION* 30 Ch. D. 116, 54 L. J. Ch. 1102, 52 L. T. 922, 33 W. R. 795

8. — *Privileged Communications—Opinions of Counsel—Reports of Sub-Committees.* Upon a summons by the Defendant that the Plaintiffs—

**X. PRACTICE — DISCOVERY — DOCUMENTS—**  
*continued.*

the corporation—might be ordered to produce the documents comprised in their affidavit of documents:—

*Held*, by Pearson, J., that the opinions of counsel with reference to these proceedings, whether taken before or after the commencement of the action, were privileged; and the fact that the Defendant was a ratepayer and the opinions might have been paid for out of the parish rates gave the Defendant no special claim to inspection; and also that minutes of the corporation and sub-committees appointed by them to report concerning matters connected with the litigation were also privileged. *MAYOR OF BRISTOL v. COX* [26 Ch. D. 678, 53 L. J. Ch. 1144, 50 L. T. 719, 33 W. R. 255]

— Costs — Taxation — Discretion of Taxing Master.

*See PRACTICE—COSTS.* 24.

— No notice to produce — Trial — Secondary evidence.

*See PRACTICE—EVIDENCE.* 10.

— Order for—Indorsement — Service on solicitor.

*See PRACTICE—ATTACHMENT OF PERSON.* 2.

— Privilege—Solicitor.

*See SOLICITOR—PRIVILEGE.*

— Stannaries Court—Winding-up petition.

*See COMPANY—COST BOOK COMPANY.*

— Winding-up—Company's books.

*See COMPANY—WINDING-UP.* 7.

**XI. PRACTICE — DISCOVERY — INTERROGATORIES — Deposit — Security — Co-ownership Action—O. XXXI., r. 26.]** A managing owner having brought a co-ownership action against his co-owners for an account to recover a balance, he sought to interrogate the Defendants, thirty-four in number, and to be dispensed from making the usual deposit. The Defendants contended that a deposit ought to be made in respect of each Defendant interrogated. The Court ordered a deposit of £5, and 10s. for each additional folio over five and no more. *THE "WHICKHAM"* 53 L. T. 236

2. — *Discovery of Plaintiff's Evidence.]* B. and N., two landowners in the parish of M., brought an action for a declaration that a piece of land formed part of M. Common, and to establish commonable rights thereover. N. sued as owner in fee of a beerhouse and three cottages, and the Plaintiffs pleaded the exercise of the rights claimed from time immemorial. The Defendant was the lord of an adjacent manor, and his defence was that the piece of land never formed part of M. Common, but was common land forming part of his own manor; that if the Plaintiffs ever had any rights of common thereon such rights had been extinguished; that some of the rights claimed could only be used in respect of ancient tenements, and that the beerhouse and three cottages in respect of which N. sued had no land held therewith. After the defence had been delivered the Defendant administered interrogatories to the Plaintiffs, asking in effect:—1. How long the Plaintiffs had been owners or occupiers of their properties, and for what estates, what was the tenure thereof, and whether those lands were

**XI. PRACTICE — DISCOVERY — INTERROGATORIES—continued.**

within the limits of any and what actual or reputed manors, and whether any such premises were ancient messuages, and whether the beerhouse and three cottages had any and what land, appurtenant thereto or held therewith. 2ndly. Whether the Plaintiffs or their predecessors in title, as proprietors or occupiers of any lands in M., or under any other alleged title, had exercised the rights claimed upon any and what parts of M. Common, or upon any and what part of the piece of land in question. 3rdly. The Plaintiffs were asked to set forth particulars of their exercise of such rights, and whether they did so by any license or in consideration of any and what payment. The Plaintiffs objected to answer these interrogatories on the ground that they related exclusively to their own title and to the evidence they should adduce at the hearing.

Upon a summons that the Plaintiffs might be ordered to make a sufficient answer:—

*Held*, by Kay, J., that the Plaintiff N. must answer so much of the first interrogatory as asked, whether the beerhouse and cottages had any lands appurtenant thereto or held therewith, because he had not pleaded that they had, and the Defendant had pleaded that they had not; but that the rest of the interrogatories need not be answered, because they were in effect directed to the discovery of the evidence by which the Plaintiffs intended to prove their case at the hearing.

*Eade v. Jacobs* (3 Ex. D. 335) and *Hoffmann v. Postill* (L. R. 4 Ch. 673) explained.

*Lowndes v. Davies* (6 Sim. 468) dissented from.

On appeal by the Defendant the question was left to the Judges of the Court of Appeal as arbitrators to settle what parts of the interrogatories should be answered, and the Plaintiffs were directed to answer further parts of them. *BIDDER v. BRIDGES* - 29 Ch. D. 29, 54 L. J. Ch. 798, [51 L. T. 818, 52 L. T. 455, 33 W. R. 272, 792 (C.A.)]

3. — *Insufficient Answer—Vivâ voce Examination—O. XXXI., r. 11.* Under an order for *vivâ voce* examination under the above rule, where a person has omitted to answer interrogatories or has answered them insufficiently, only such answer can be required as would have been sufficient if originally given in writing. The costs of any examination exceeding these limits must be paid by the party examining. So *held*, by Pearson, J. *LITCHFIELD v. JONES* (No. 2)

[54 L. J. Ch. 207, 51 L. T. 572, 33 W. R. 251, [W. N. (1884) 218]

4. — *Libel—Matters in Issue—O. XXXI., r. 1—Comparison of Handwriting.* In order to prove that the Defendant was the writer of a libellous letter, he may be interrogated as to whether or not he was the writer of another letter addressed to a third person,—as leading up to a matter in issue in the cause, and therefore relevant. *JONES v. RICHARDS* - 15 Q. B. D. 439

5. — *Privileged Communication—Answer to Interrogatory—Sufficiency of—Professional Confidence—Solicitor and Client.* The privilege from discovery resulting from professional confidence does not extend to facts communicated by the solicitor to the client which cannot be the subject of a confidential communication between them,

**XI. PRACTICE — DISCOVERY — INTERROGATORIES.—continued.**

even though such facts have a relation to the case of the client in the action.

A Plaintiff interrogated a Defendant as to whether interviews and correspondence had not, between certain dates, taken place between their respective solicitors, and also between the Defendant's solicitor and a third person, in reference to an agreement the specific performance of which it was the object of the action to enforce.

The Defendant declined to answer the interrogatory, so far as it related to communications between his solicitor and other persons, on the ground that he had no personal knowledge, and the only information he had was derived from confidential communications between him and his solicitor in reference to his defence in the action:—

*Held*, by Kay, J., that he must make a further answer. *FOAKES v. WEBB* - 28 Ch. D. 287, [54 L. J. Ch. 262, 51 L. T. 624, 33 W. R. 249]

6. — *Sufficiency of Answer—Privilege—Matters within Servants' Knowledge—Reports.* In an action for damage caused by the negligence of the Defendants or their servants in the use of an engine, whereby sparks, &c., escaped from the engine and set fire to the Plaintiffs' buildings, the Plaintiffs administered this interrogatory: "Have the Defendants or any of their servants or agents any knowledge, information, or belief as to the cause of the fire in respect to the happening of which this action has been brought? If yea, set out the same fully, with dates and all particulars. If any of the said servants or agents have communicated to the Defendants such knowledge, information, or belief, let the Defendants set out the substance of such communications, with dates and all particulars."

To this the Defendants answered; "We have no information at all on the subject, save such as appears in the reports set out in the schedule to our affidavits, filed in this cause on 28th May, and which by the judgment of the Divisional Court of the 7th July were held to be privileged from production, which we decline to produce."

*Held*, by Mathew and Smith, JJ., a sufficient answer, as a further or better answer could not be given without disclosing the contents of privileged reports made to the Defendants by their servants, which reports the Defendants were not bound to disclose. *Bolekow v. Fisher* (10 Q. B. D. 161, 52 L. J. Q. B. 12, 47 L. T. 724, 31 W. R. 235, 5 Asp. M. C. 20) distinguished. *LONDON, TILBURY, AND SOUTHERN RY. CO. v. KIRK & RANDALL*

[51 L. T. 599]

7. — *Title—Questions as to Defendants.* The Plaintiffs brought an action for an account of coal worked by the Defendants under certain closes of land, and an injunction to restrain any further working, and by their statement of claim alleged that they were entitled to the minerals under the said closes of land. The Defendants denied the Plaintiffs' title, but did not set up any title in themselves. The Plaintiffs administered interrogatories to one of the Defendant's firm, requiring him (*inter alia*) to set forth "under or by what, if any, conveyance, assignment, lease, licence, or authority the Defendant firm claim to be entitled to the coal and minerals underlying

**XI. PRACTICE—DISCOVERY—INTERROGATORIES—*continued*.**

the closes in question, giving the dates and names of parties to any such conveyance, assignment, or lease, and the names of the person or respective persons from whom they allege that they obtained any such licence or authority, and giving the date of such licence or authority, and stating whether the same be in writing or not.' The Defendants objected to answer such interrogatory, whereupon the Plaintiffs applied for, and obtained an order for a further answer, but the order did not direct to what extent the answer should go:—

*Held*, by Pearson, J., on motion to discharge the order, that the order was right. *CAYLEY v. SANDYCROFT BRICK, TILE, AND COLLIERY CO.*

[33 W. R. 577, W. N. (1885) 80

— As to documents.

See PRACTICE—DISCOVERY—DOCUMENTS.

1.

— Nullity of marriage.

See PRACTICE—DIVORCE. 6.

— Patent—Revocation—Deposit.

See PATENT. 6.

**XII. PRACTICE—DIVORCE—*Alimony—Permanent—Allowance out of Lunatic's Estate—Assignment—*20 & 21 Vict. c. 85, s. 25.]** On a decree for judicial separation an order was made for payment of £60 a year to the wife as permanent alimony. The husband was afterwards found lunatic by inquisition, and by an order in Lunacy and Chancery the dividend of a sum of stock to which he was entitled in a Chancery suit were ordered to be carried to his account in the lunacy and £60 a year to be paid out of them to his wife in respect of her alimony till further order. The wife assigned the annuity to a purchaser, who presented a petition in Lunacy and in the suit to have the annuity paid to her:—

*Held*, that the petition must be refused, on the ground that whether the annuity was considered as alimony or as an allowance made to the wife by the Court in Lunacy, it was not assignable. *Re ROBINSON* — 27 Ch. D. 160, 53 L. J. Ch. 986,

[51 L. T. 737, 33 W. R. 17 (C.A.)

2. — *Attachment—Contempt—Payment of Costs.*] A respondent being in contempt for non-obedience of an order for restitution of conjugal rights, the petitioner applied for a writ of attachment against him:—*Held*, affirming the decision of Hannen, P. (10 P. D. 72, 54 L. J. P. 26, 33 W. R. 370), that since the passing of the Matrimonial Causes Act, 1884, the writ could not be issued notwithstanding that the contempt existed prior to that Act:—*Held*, also, that the writ could not issue for non-payment of costs. Application refused. *WELDON v. WELDON* (No. 2) 54 L. J. P.

[60, 52 L. T. 233, 33 W. R. 427, 49 J. P. 517

(C.A.)

3. — *Attachment—Wife's Costs—Security—Debtors Act, 1869.*] Notwithstanding the provisions of the Debtors Act, 1869, a husband is liable to attachment if he does not find security for his wife's cost of suit. *LYNCH v. LYNCH*

[10 P. D. 183, 54 L. J. P. 93, 34 W. R. 47

4. — *Damages—Payment into Court—Proceedings under the Debtors Act.*] The Court having ordered damages to be paid into the re-

**XII. PRACTICE—DIVORCE—*continued*.**

gistry, and proceedings in default being impracticable, as there was no one to institute them, the Court ordered the damages to be paid to the petitioner, he undertaking to pay them into Court. *GYTE v. GYTE AND MOLLINEAUX* 10 P. D. 185,

[34 W. R. 47

5. — *Evidence—Suits of Nullity of Marriage and Dissolution of Marriage—Cross-examination as to Adultery.*] A suit had been instituted for nullity of marriage by reason of impotence, and a cross-suit for dissolution of marriage by reason of adultery:—*Held*, that, in the first suit, the petitioner in that suit might be cross-examined as to her improper intimacy with the co-respondent in the cross-suit. *M. v. D.* (No. 2)

[10 P. D. 175, 34 W. R. 48

6. — *Interrogatories to Party to Suit—Nullity of Marriage—Jurisdiction of Divorce Division—Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 23—Interrogatories necessarily criminating—Felony.*] In a suit for nullity of marriage, the Court has power to give leave to administer interrogatories between the parties to the suit; for suits of that kind were formerly within the jurisdiction of the Ecclesiastical Courts, which had power to allow interrogatories to be administered between the parties, and now all the jurisdiction of the Ecclesiastical Courts as to suits for nullity of marriage (including matters of practice and procedure) is vested in the Probate, Divorce, and Admiralty Division. And, further, even if the power to allow interrogatories to be administered between the parties did not otherwise exist, it would be conferred upon the Probate, Divorce, and Admiralty Division by the Supreme Court of Judicature Act, 1873; for at the time of the passing that statute the Superior Courts of Common Law and the Court of Chancery had power to allow interrogatories to be administered between the parties to a suit; and by sect. 16, all the jurisdiction of those Courts, including the ministerial powers and authorities incident thereto, was transferred to and vested in the High Court of Justice, and by sect. 23 the jurisdiction transferred to the High Court may (so far as regards procedure and practice) be exercised in the same manner as it might have been exercised by any of the Courts whose jurisdiction has been transferred.—Leave to administer interrogatories ought not to be refused on the ground, that it is plain from the nature of the case that they must necessarily criminate the party interrogated, who cannot answer them without admitting that he has been guilty of felony: he may, however, decline to answer them.—*Semble*, that inasmuch as proceedings for divorce and for other matrimonial causes are excluded from the operation of the Rules of the Supreme Court, 1883, by O. LXVIII., r. 1 (d), an application for leave to administer interrogatories between the parties to a suit ought not to be made to a registrar of the Divorce Division; but it ought to be made in the first instance to one of the Judges of the Court. *HARVEY v. LOVEKIN* (f. c. HARVEY) 10 P. D. 122, 54 L. J. P. 1,

[33 W. R. 188 (C.A.)

7. — *Intervention—*23 & 24 Vict. c. 144, s. 7.—*Material Facts not brought before the Court.*"]

**XII. PRACTICE—DIVORCE—continued.**

A wife sued for dissolution of marriage on the ground of adultery and cruelty. The husband alleged that the wife had been guilty of adultery. At the trial a decree *nisi* for dissolution was made. The husband applied for a new trial on the ground that fresh evidence had been discovered to shew the wife's adultery before the decree *nisi*, and filed affidavits alleging facts not known at the trial which went to prove adultery. He obtained a rule *nisi*, but the rule was discharged on argument. The husband appealed. Immediately afterwards an uncle of the husband entered an appearance, as intervener, and filed affidavits which were substantially the same as those used on the application for a new trial. There was nothing to shew that he was acting on behalf of or in collusion with the Respondent. The wife moved to make the decree for dissolution absolute. This was refused, but leave was given her to move the Court to reject the intervention. The husband abandoned his appeal from the refusal of a new trial. After this the motion of the wife to reject the intervention of the uncle was heard by the president and refused. The wife appealed:—*Held*, by the Court of Appeal, that the Act 23 & 24 Vict. c. 144, sect. 7, authorizes intervention by any persons where material facts have not been brought before the Court, whether by intention or through accident. Whether where the Petitioner, after the decree *nisi*, is guilty of conduct disentitling him or her to have the decree made absolute, the right to intervene is confined to the Queen's Proctor, *quære*:—*Held*, that the words "not brought before the Court," mean, not brought before the Court at a time when the Court can act upon them for the purpose of seeing whether a decree *nisi* ought to be made, and that the bringing them before the Court on an application for a new trial is not bringing them before the Court within the meaning of this clause, so as to prevent an intervention. Whether the rules as to granting a new trial on the ground of fresh evidence discovered shewing misconduct in the petitioner are the same as in a case between ordinary litigants, *quære*. Where a Respondent is not entitled to a new trial, intervention on the ground of fresh evidence as to acts prior to the decree *nisi* will not be allowed if the intervener is merely acting on behalf of and in collusion with the Respondent; but the fact that he is a near relative of the Respondent is no ground for rejecting the intervention:—*Held*, therefore, that in the present case, the facts alleged being undoubtedly material, and the affidavits making a case which shewed that there was ground for investigating them, the intervention had rightly been allowed. *HOWARTH v. HOWARTH* [9 P. D. 218, 51 L. T. 872 (C.A.).]

8. — *New Trial—Application for—Time for appealing*—23 & 24 Vict. c. 144, s. 2; 36 & 37 Vict. c. 66, s. 16; 38 & 39 Vict. c. 77 s. 18; 44 & 45 Vict. c. 68, s. 9.] An appeal from a decision of a Judge of the Probate Division granting or refusing a new trial in the Divorce Court must be made within fourteen days in accordance with the Divorce Court Act, 1860 (23 & 24 Vict. c. 144), s. 2. *AHIER v. AHIER* - 10 P. D. 110, [54 L. J. P. 70, 52 L. T. 744, 33 W. R. 770 (C.A.).]

**XII. PRACTICE—DIVORCE—continued.**

9. — *Restitution of Conjugal Rights—Service of Petition—Jurisdiction.*] The Court has no power to allow service abroad of a petition for restitution of conjugal rights. *CHICHESTER v. CHICHESTER* - 10 P. D. 186, 34 W. R. 65

10. — *Sequestration—Previous Writ of Attachment—Personal Service.*] The Respondent in a suit for restitution of conjugal rights was evading service of the decree, and an order as to custody of children. The Court, though she was not abroad, ordered a writ of sequestration to issue, without a previous writ of attachment or personal service of the decree or order. *ALLEN v. ALLEN* - 10 P. D. 187, 54 L. J. P. 77

11. — *Settlements—Variation—Nullity of Marriage.*] A marriage having been annulled, the Court ordered all the property of the alleged wife to be reconveyed to her freed from the trusts of the settlement upon the alleged marriage. *A. v. M. (or ADDINGTON v. MELLOR)* 10 P. D. 178, [54 L. J. P. 31, 33 W. R. 232]

12. — *Settlements—Variation—Costs of Suit.*] A marriage had been dissolved at the suit of the husband. By the marriage settlements the wife had certain interests in her husband's property, and had also power to appoint a portion of her own property for the benefit of any husband she might marry after the death of her late husband, and for the children of that marriage.—*Held*, She and her husband had at present about £400 a year each, but she was entitled to reversionary property of great value, and was liable to pay the costs of the suit.—The Court gave half of the wife's reversionary income to the husband for himself and the two children of the marriage, and *Held*, by Hannen, P., that her interest in her husband's property must be extinguished, and that her powers of appointment in favour of a future husband and children must not take effect until after the death of her late husband:—*Held*, also, that in varying the settlements the Court must not take into consideration in her favour that she has to pay the costs of the suit. *NOEL v. NOEL* - 10 P. D. 179, 54 L. J. P. 73, [33 W. R. 552]

— *Alimony—Order for payment of—"Debt or liability" provable in bankruptcy.*  
See *BANKRUPTCY—PROOF*. 2.

— *Damages—Condonation.*  
See *HUSBAND AND WIFE—DIVORCE*. 1.

**XIII. PRACTICE—ECCLESIASTICAL—Particulars—Criminal Suit.**] In a criminal suit containing charges of misconduct against a clerk in holy orders, an order was made after the close of the charges. Such particulars should as a rule be applied for on the admission of articles. *BISHOP OF SALISBURY v. OTTLEY* - 10 P. D. 20

**XIV. PRACTICE—EVIDENCE—Affidavit—Consul refusing to administer Oath.**] Where by German law a British consul is not allowed to administer an oath, the affidavit may be sworn before a German judge. *IN THE GOODS OF FAWCUS* - 9 P. D. 241, 54 L. J. P. 47, [33 W. R. 323, 48 J. P. 743]

**XIV. PRACTICE—EVIDENCE—continued.**

2. — *Affidavit—Cross-Examination—Production of Deponent—Expenses—Rules of Supreme Court, 1883, O. XXXVII., r. 21; O. XXXVIII., r. 28—15 & 16 Vict. c. 86, ss. 38, 41.* The direction in O. XXXVIII., r. 23, of Rules of the Supreme Court, 1883, that the party producing a deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production, taken in conjunction with O. XXXVII., r. 21, of the same rules, which provides that evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial, is not confined to the cross-examination of the deponent before the Court at the trial of the action, but applies also to a cross-examination before the Chief Clerk in Chambers or before an examiner. So held, by Chitty, J. *BACKHOUSE v. ALCOCK* - - 28 Ch. D. 669, 54 L. J. Ch. 842, [52 L. T. 342, 33 W. R. 407]

3. — *Affidavit—Cross-Examination—Expenses of Deponent—Rules of Supreme Court, 1883, O. XXXVII., rr. 9, 13, 20, 21; O. XXXVIII., r. 28.* Plaintiff after judgment in an administration action having obtained an order for cross-examination of Defendant (the executor) upon his affidavit, in answer to inquiries directed by the judgment, denying possession of any part of the testator's estate, Defendant declined to attend before the examiner until Plaintiff had paid his expenses. Plaintiff having subsequently served Defendant with a subpoena, moved that he be ordered to attend at his own expense:—

Held, by Chitty, J., that it was open to the Plaintiff to combine the two methods of procedure, and that the Defendant was bound to produce himself at his own expense for cross-examination; and further, that regarding the Defendant as a deponent whose attendance was required for cross-examination, the penalty imposed by O. XXXVIII., r. 28, of having his affidavit rejected did not relieve him from the obligation to attend at his own expense. *Re BAKER, CONNELL v. BAKER* - - 29 Ch. D. 711, [54 L. J. Ch. 844, 52 L. T. 421]

4. — *Affidavit—Cross-Examination on, before Trial—Expenses of Production of Deponent—O. XXXVII., r. 22; O. XXXVIII., r. 28—15 & 16 Vict. c. 86, ss. 38, 41.* The effect of O. XXXVIII., r. 28, taken in conjunction with O. XXXVII., r. 22, is that the expenses of production of a witness for cross-examination upon affidavit before a trial must be borne in the first instance by the party producing such witness. So held, by Kay, J. *MANSEL v. CLANRICARDE, MANSEL v. NORTON* [54 L. J. Ch. 982, 53 L. T. 496, W. N. (1885) 129]

5. — *Affidavit—Cross-Examination on, before District Registrar—O. XXXVIII., r. 1.* *LUMB v. OSBURN* - - - W. N. (1884) 218.  
See also, *PYE v. PYE*. W. N. (1885) 174

6. — *Affidavits—Taking off File—Irregularity—Illiterate Witness—O. XXXVII., r. 13.* Three affidavits made by the Defendant, an illiterate person, were sworn with the usual form of jurat not containing the certificate required by the

**XIV. PRACTICE—EVIDENCE—continued.**

above rule. The managing clerk of the Defendant's solicitor deposed that he had prepared the affidavits from the Defendant's personal instructions, that he carefully read them over to him before they were sworn, and that the Defendant appeared perfectly to understand them. No statement was made, however, that the affidavits were read over in the commissioner's presence.

Held, by Kay, J., that there was no sufficient evidence that the affidavits were read over to and appeared to be perfectly understood by the deponent within the meaning of the above rule, and that they must be taken off the file. *Re LONGSTAFFE (OR LONGSTAFF). BLENKARN (OR BLENKHARN) v. LONGSTAFFE* - - 54 L. J. Ch. 516, [52 L. T. 681, W. N. (1884) 216]

7. — *Commission to examine Witnesses Abroad—Rules of Supreme Court, 1883, O. XXXVII., r. 5.* Where it is sought to have a material witness examined abroad, and the nature of the case is such that it is important that he should be examined here, the party asking to have him examined abroad must shew clearly that he cannot bring him to this country to be examined at the trial. *LAWSON v. VACUUM BRAKE CO.* [27 Ch. D. 137, 54 L. J. Ch. 16, 51 L. T. 275, [33 W. R. 186 (C.A.)]

8. — *Examination before Examiner—Adjournment after Depositions signed—Power to recall Witness—O. XXXVII., rr. 12, 45.* After a witness has been examined before an examiner of the Court and his depositions have been signed, the examiner has power to adjourn the examination, and the witness may be recalled and is bound to attend on notice that his attendance is required. *Ex parte OFFOR. Re METROPOLITAN (BRUSH) ELECTRIC LIGHT & POWER CO.* [54 L. J. Ch. 253, 51 L. T. 818]

9. — *Further Consideration—Affidavit not mentioned in Chief Clerk's Certificate—O. xv.* In an action the proceedings in which had been carried on under an order made in pursuance of O. xv., and where there had been no trial, Kay, J., on further consideration of the action, allowed an affidavit which had not been before the Chief Clerk, and was therefore not mentioned in his certificate, to be read. *Re MICHAEL, DESSAU v. LEWIN* - - 52 L. T. 609, W. N. (1885) 104

10. — *Trial of Action—Document—No Notice to Produce—Secondary Evidence.* On the twelfth day of the trial of an action the Defendant stated, in cross-examination, that he had been advised by I., an engineer (one of his witnesses) as to his patents, and that he had received from him a written report. The Plaintiff, who had not required from the Defendant an affidavit of documents, thereupon, by leave, gave notice to the Defendant to produce the report on the following day. This not having been done, the Plaintiff's counsel, upon the close of the Defendants' evidence, asked leave to recall I. or the Defendant to ask what were the contents of the report, or that I. might produce a copy of it. North, J., refused leave, on the ground that proper notice to produce the report had not been given. *SUGG v. BRAY* - - 54 L. J. Ch. 132, 51 L. T. 194

**XIV. PRACTICE—EVIDENCE—continued.**

- Administration—Married woman entitled to small share.  
See HUSBAND AND WIFE—WIFE'S PROPERTY. 1.
- Application to stay proceedings pending appeal.  
See PRACTICE—STAYING PROCEEDINGS. 4.
- Bankruptcy proceedings.  
See BANKRUPTCY—EVIDENCE.  
BANKRUPTCY—EXAMINATION.
- Call—Affidavit in support of.  
See COMPANY—CONTRIBUTORY. 4.
- Commission—Refusal of, by Judge of assize—Appeal.  
See PRACTICE—APPEAL. 12.
- Costs—Witnesses ready but not called—Second opinion on evidence.  
See PRACTICE—COSTS. 24.
- Default of pleading—Motion for judgment on.  
See PRACTICE—MOTION FOR JUDGMENT.
- Examination—Insufficient answer to interrogatories.  
See PRACTICE—DISCOVERY—INTERROGATORIES. 3.
- Garnishee—Examination of.  
See PRACTICE—ATTACHMENT OF DEBTS. 1.
- Service of writ out of jurisdiction.  
See PRACTICE—WRIT. 3, 4, 10.
- Suits for divorce and for nullity—Cross-examination as to adultery.  
See PRACTICE—DIVORCE. 5.
- Unwholesome meat—Condemnation by justices.  
See PUBLIC HEALTH ACTS. 18.
- Winding-up.  
See COMPANY—WINDING-UP. 4—7.
- Witness in bastardy proceedings.  
See BASTARDY. 3.

**XV. PRACTICE—INJUNCTION—Obstruction to Watercourse—Judicature Act (Ireland), 1877, s. 28.]** In an action to recover damages for obstructing a watercourse, and for an injunction, the Plaintiffs obtained a verdict for nominal damages. The Defendant having continued the acts of obstruction complained of, the Court granted an injunction. Form of order. *AGNEW v. M'DOWELL* [14 L. R. Ir. 445]

2. — *Undertaking as to Damages—Enforcement—Mistake in Law—Discretion—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12.]* Where an injunction has been wrongly granted, an undertaking as to damages given by the Plaintiff is equally enforceable whether the mistake was of law or of fact, and in such a case the Court has no discretion to refuse an enquiry as to damages, unless the damages alleged would be too remote if the Defendant were suing in respect of them upon a breach of contract.

In such a case the above section will not prevent a husband-Defendant from enforcing an undertaking by a wife-Plaintiff. A married woman who has given an undertaking as to damages since the above Act, will be dealt with

**XV. PRACTICE—INJUNCTION—continued.**

on the same footing as that on which a married woman's next friend who had given such an undertaking would have been dealt with before the Act.

An army surgeon, living apart from his wife, was under orders to sail for Egypt, and proposed to take some of his children with him. The wife obtained an injunction to restrain him from so doing, the Judge considering that he would be acting in contravention of the separation deed between them, but the Court of Appeal dissolved the injunction. The husband applied for an enquiry as to damages occasioned to him by the injunction; in enforcement of an undertaking as to damages given by the wife, alleging loss of free passages to Egypt for the children, loss of pay, and expenses caused by his stay in London.

*Held*, by Pearson, J., that the enquiry must be granted. *HUNT v. HUNT* (No. 2) 54 L. J. Ch. 289, [W. N. (1885) 243]

- Breach—Costs—Appeal.  
See PRACTICE—APPEAL. 9.
- Claim for—Service of writ out of jurisdiction.  
See PRACTICE—WRIT. 6, 7.
- Disobedience to—Corporation.  
See PRACTICE—SEQUESTRATION.
- Restraining transfer of stock—Undertaking by married woman.  
See PRACTICE—CHARGING ORDERS.

**XVI. PRACTICE—INTERPLEADER—Appeal—Judge finally disposing of whole Matter—Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 19—Rules of the Supreme Court, 1883, O. XL., r. 5; O. LVII., r. 13.]** When an interpleader issue has been tried by a Judge and a jury, and upon the finding of the jury the Judge has, under O. LVII., r. 13, pronounced judgment disposing of the whole matter of the interpleader proceedings, but has given leave to appeal, a party to the issue who is dissatisfied with both the finding of the jury and the judgment of the Judge may appeal under O. XL., r. 5, to a Divisional Court of the Queen's Bench Division, and under the Supreme Court of Judicature Act, 1873, s. 19, from that Court to the Court of Appeal.—*Semble*, that *Bur-stall v. Bryant* (12 Q. B. D. 103, 49 L. T. 712, 32 W. R. 495, 48 J. P. 119) was wrongly decided. *ROBINSON v. TUCKER* 14 Q. B. D. 371, 53 L. J. [Q. B. 317, 50 L. T. 380, 32 W. R. 697 (C.A.)]

2. — *Appeal—Trial of Issue—Appeal from Judgment—Judicature Act, 1873, s. 19.]* Where it sought to impeach the judgment of a Judge on the trial of an interpleader issue with respect only to the finding of the facts or the ruling of the law, and not with respect to the final disposal of the whole matter of the interpleader proceedings, an appeal will lie from such judgment under sect. 19 of the Judicature Act, 1873, as it will from any other judgment or order of a Judge. *DAWSON v. FOX* (or *FOX v. SMITH*) 14 Q. B. D. 377, [54 L. J. Q. B. 299 (C.A.)]

3. — *Appeal—Summary Decision at Chambers—Appeal from Queen's Bench Division to Court of Appeal—Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 17—Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 20—*

**XVI. PRACTICE—INTERPLEADER—continued.**

*O. LVII., rr. 8, 11.]* By the combined operation of the Common Law Procedure Act, 1860, s. 17, and of the Appellate Jurisdiction Act, 1876, s. 20, no appeal lies to the Court of Appeal from a decision of the Queen's Bench Division upon an appeal from the summary decision at Chambers of an interpleader summons, and rule 11 of the Rules of the Supreme Court, 1883, *O. LVII.*, does not confer any power to give leave to appeal. *WATERHOUSE v. GILBERT* 15 Q. B. D. 569, 54 L. J. Q. B. [440, 52 L. T. 784 (C.A.)]

— Security for costs.

See PRACTICE—COSTS. 12.

**XVII. PRACTICE—JOINDER OF ACTIONS—**

*Recovery of Land—Amendment—O. XVIII., r. 2; O. XXVIII., r. 1.]* An agreement for tenancy having failed, an action was brought to recover the land, and the Defendant who had entered into possession, set up the agreement as a defence. The Plaintiff having brought a summons for leave to amend the indorsement on the writ by claiming a valuation, which he alleged the Defendant had agreed to pay on entering into possession of the land, but had not paid:—*Held*, by Bacon, V.-C., that the Plaintiff had a right to claim the valuation under the agreement as an alternative, in case he failed in recovering the land, and that the amendment should be allowed. *RUSHBROOKE (or RUSBROOKE) v. FARLEY*

[54 L. J. Ch. 1079, 52 L. T. 572, 33 W. R. 557]

2. — *Recovery of Land—Counterclaim—Issue joined—Amendment—O. XVIII., r. 2; O. XXVIII., rr. 1, 3.]* In an action for specific performance of an agreement for a lease and to build a house, issue had been joined, the pleadings shewed no real dispute between the parties, and the action had been set down for trial. The Plaintiff had taken possession under the agreement.

*Held*, by Bacon, V.C., that leave ought not to be given to the Defendant to amend his counterclaim by adding thereto a claim for recovery of the land agreed to be let. *CLARK v. WRAY*

[31 Ch. D. 68, 53 L. T. 485, 34 W. R. 69]

3. — *Recovery of Land—O. XVIII., r. 2.]* A foreclosure action is an action for recovery of land within the above order; hence a claim for possession of the mortgaged hereditaments may be added without special leave.

Dictum of Jessel, M.R., in *Tawell v. Slate Co.* (3 Ch. D. 629) not followed. *HOAR v. LOE*

[W. N. (1884) 241]

— Action assigned to Chancery Division—Joinder of cause of action not so assigned.

See PRACTICE—TRIAL. 1.

— Recovery of land—Other claims joined without leave—Objection by defence.

See PRACTICE—PLEADINGS. 7.

**XVIII. PRACTICE—JUDGMENT—Action against**

*Partnership Firm—Service of Writ on one Member—Appearance by him only “as a partner of the firm”—O. XII., r. 15.]* A writ was issued against a trading partnership (unincorporated), and served upon a member of the firm, who entered an appearance: “W. N., a partner of the firm of W. T. & Co.” There was no service upon or

**XVIII. PRACTICE—JUDGMENT—continued.**

appearance by the other members of the firm.—*Held*, by Mathew and Day, JJ., that leave to sign judgment against the firm for default of appearance could not be granted.—*JACKSON v. LITCHFIELD & SONS* (8 Q. B. D. 474) followed. *ADAM v. TOWNEND* - - - 14 Q. B. D. 103

2. — *Consent Order—Withdrawal of Consent—Surprise or Mistake.]* An action was brought for an injunction to restrain the Defendant from selling certain buttons alleged to be an infringement of the Plaintiffs' registered trade-mark. The Defendant, believing he had no defence, consented to an order for a perpetual injunction with costs. Before the order was drawn up, he received a letter from the manufacturer of the buttons, which were made in Germany, wherefrom it appeared that the buttons had been sold in this country long before the registration of the Plaintiffs' trade-mark. On motion by the Defendant that he might be relieved from the consent so given:—*Held*, by Kay, J., that a party who has deliberately consented to a perpetual injunction cannot be permitted to withdraw his consent merely because he has subsequently discovered that he might have a good defence to the action; that the case was not one of mistake; and that the motion must be refused. *ELIAS & BOCHS v. WILLIAMS* 54 L. J. Ch. 336, 52 L. T. 39

3. — *Error in—Correction of—Order passed and entered—Order not conformable to what the Court intended.]* An order of the Court of Appeal was drawn up, passed, and entered, in such a form that it might be contended to decide questions which had not been before the Court, and which it had not intended to decide:—

*Held*, that the Court had jurisdiction to alter the record of its order, so as to make conformable to the order which the Court had pronounced, and the record was altered accordingly, but as the applicant had not adopted the usual and proper course of applying to vary the minutes, he was ordered to pay the costs of the application. *RE SWIRE. MELLOR v. SWIRE* - 30 Ch. D. 239, [53 L. T. 205, 33 W. R. 785 (C.A.)]

4. — *Foreclosure Order—Alteration—Rules of Supreme Court, 1883, O. xv., r. 1; O. XXVIII., r. 11.]* The Plaintiffs in a foreclosure action applied by summons under *O. xv., r. 1*, for an account. The Chief Clerk pronounced the usual order for an account and foreclosure. The Defendants objected to the direction for foreclosure, and the Plaintiffs assenting, the order was drawn up for an account only, and was passed and entered in that form. When the parties came before the Chief Clerk to proceed with the account, he objected to the order as not being the one he had pronounced, and refused to proceed with the account. Subsequently the registrar, at the instance of the Chief Clerk, without any motion or summons, altered the order by adding the usual directions for foreclosure. The Defendants moved to strike out the additions. Kay, J., declined to do so, as he considered that the parties were not at liberty to have an order drawn up, different from the order pronounced, without applying to the Court for the purpose; but, being of opinion that the addition



**PRACTICE—JUDGMENT—continued.**

been irregularly made, he stayed proceedings on the existing order, giving the Plaintiffs leave to apply for a fresh order for accounts and costs. The Defendants appealed:—  
**1.** that assuming the order as passed and made to contain an error arising from an accidental slip or omission, an alteration made in it without any motion or summons for the purpose was regular, and must be discharged, and that the Plaintiffs must pay the costs, as they ought to have applied to the Judge when the Chief Clerk refused to proceed with the accounts.  
**2.** whether a foreclosure order can be made under the Statute, r. 1, as in *Smith v. Davies* (Col. 257),

whether there was jurisdiction to stay proceedings under the order against the wish of the Defendants, *quære*. **BLAKE v. HARVEY**

**14 D. 827, 53 L. T. 541, 33 W. R. 602 (C.A.)**

— *No Proceeding for a Year—Notice of Supreme Court, 1883, O. XIII., r. 3; v., r. 13.* Where on default of appearance Defendant the Plaintiff takes no step in proceedings for a year, O. LXIV., r. 13, applies, and it is necessary before judgment can be signed. **MYER v. MYER** **14 Q. B. D. 231, 54 L. J. Q. B. 101, 51 L. T. 560, 33 W. R. 407 (C.A.)**

— *Non-compliance with Order directing execution of an Instrument—Nomination of executor—Judicature Act, 1881 (47 & 48 Vict. c. 61), s. 14.* Where a Defendant refused to obey an order directing her to execute a mortgage, the Judge, appointed his Chief Clerk to execute the above section. **Re EDWARDS. OWEN v. EDWARDS** **33 W. R. 578, W. N. (1885) 74**

— *Special Directions—Order for Payment of Instalments—Removing stay of Execution—Judgment.* The Plaintiffs having obtained a judgment in an action under Lord Campbell's Act for 3 damages, the Judge at the trial (without the consent of the Plaintiffs, as they alleged) ordered judgment to be entered for the Plaintiffs, at the damages and costs should be paid by instalments of £20, the damages to be paid in the hands of one of the Plaintiffs, in trust for her and her co-Plaintiffs (who were infants), to be paid in priority to the costs. Judgment was entered in accordance with these directions. The Defendant failed to pay the instalment; and was, as the Plaintiffs by their application alleged, disposing of all his available property. The Court, on the application of the Plaintiffs, and on notice to the Defendant, ordered judgment to be amended by striking out the direction, so as to stand for a judgment in the ordinary form for the damages awarded and costs, directed that the order as to suspending execution should be entered as a separate order of the Judge at the trial, and as of the date of the order, and, having regard to the circumstances set out on the application, gave liberty to the Plaintiffs, notwithstanding such order, to issue writ of execution for the full amount of the debt.

The power to suspend execution should be exercised by a separate order, and not by a variation of the judgment. **BRIEN v. SULLIVAN** **[14 L.R. Ir. 391]**

**XVIII. PRACTICE—JUDGMENT—continued.**

— Action by executors—Death of co-Plaintiff—Execution by survivors.

*See PRACTICE—PARTIES.* 6.

— By consent—Rescission by consent—Limitation of liability.

*See PRACTICE—ADMIRALTY.* 9.

— By default—Appeal from.

*See PRACTICE—APPEAL.* 13.

— Contrary to findings of jury—New trial.

*See PRACTICE—NEW TRIAL.* 2.

— Foreclosure action.

*See MORTGAGE—FORECLOSURE.* 7-9.

— Interest on costs.

*See INTEREST.* 1.

— Married woman's separate property.

*See HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS.* 4.

— Motion for.

*See PRACTICE—MOTION FOR JUDGMENT.*

— Order fixing time to do an act—Non-compliance—Undertaking.

*See SPECIFIC PERFORMANCE.* 3.

— Partners—Action against, in name of firm—Appearance by one partner only.

*See PRACTICE—PARTIES.* 8.

— Partnership action.

*See PARTNERSHIP.* 3-5.

— Setting aside—Judgment obtained by collusion.

*See EXECUTOR—ACTIONS.* 2.

**XIX. PRACTICE—JURISDICTION—High Court of Justice—Chancery Action—Subject-matter below £10 in Value—Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 25, 34.** An action in the High Court, claiming relief which, before the Judicature Act, could have been given only by the Court of Chancery, cannot now be maintained if the subject matter is below £10 in value.

The old rule of the Court of Chancery in this respect still remains in force. **WESTBURY-ON-SEVERN RURAL SANITARY AUTHORITY v. MEREDITH** **[30 Ch. D. 387, 52 L. T. 839 (C.A.)]**

**2.** — *Probate—Revocation—Jurisdiction.* *Semble*, a Court of the Chancery Division has no jurisdiction to revoke the probate of a will. **PRIESTMAN v. THOMAS** **9 P. D. 210, 53 L. J. P. 109, [51 L. T. 843, 32 W. R. 842 (C.A.)]**

— Bankruptcy.

*See BANKRUPTCY—JURISDICTION.*

— Receiver of deceased's estate before grant of probate.

*See PRACTICE—RECEIVER.* 4.

**XX. PRACTICE—MANDAMUS—Pleading to return to Writ of Mandamus—Return of unconditional Compliance—Rules of Supreme Court, 1883, O. LIII., r. 9; O. XLVIII., r. 1; O. LXXII., r. 2—9 Anne, c. 20—1 Wm. 4, c. 21—46 & 47 Vict. c. 49.** A return of unconditional compliance to a writ of mandamus, which is not a peremptory writ, may be pleaded to, notwithstanding O. LIII., r. 9, since the procedure of pleading to the return to such writ as regulated by the repealed statutes, 9 Anne, c. 20 [Revised Ed. Statutes, 9 Anne, c. 25] and 1 Wm. 4, c. 21, is preserved by O. LXVIII., r. 1, and O. LXXII., r. 2.

**XX. PRACTICE—MANDAMUS—continued.**

Decision of Queen's Bench Division (13 Q. B. D. 696, 53 L. J. M. C. 159, 51 L. T. 203, 32 W. R. 988, 1884 Dig. col. 362) affirmed. *REG. v. JUSTICES OF PIREHILL NORTH (STAFFORDSHIRE)*

[14 Q. B. D. 13, 54 L. J. M. C. 17, 51 L. T. 534, 33 W. R. 205, 49 J. P. 36 (G.A.)]

— Motion for, in person.  
See MANDAMUS. 2.

**XXI. PRACTICE—MOTION FOR JUDGMENT—**

*Default of Pleading—Specific Performance—Evidence of Agreement.* A vendor brought an action for specific performance against a purchaser who was in possession, and, in his statement of claim, set out the agreement. The Defendant having put in no defence, the Plaintiff moved for judgment in default of defence, the action being set down as a short cause. The agreement had not been proved, but it was contended that the Defendant, by making default, had admitted the agreement as alleged, and that evidence of it was consequently unnecessary.

*Held*, by Kay, J., that the agreement must be duly verified by affidavit, and the action was ordered to stand over for the purpose. *HOLMES v. SHAW* - - - 52 L. T. 797

2. — *Default of Pleading—Proof of documents on which Plaintiff's title Depends.* On a motion for judgment in default of pleading, the Plaintiff, where his title depends on documents, must produce and prove them.

*Doherty v. Kelly* (13 Ir. L. T. R. 59) approved of. *CRISFORD v. DODD* - - - 15 L. R. Ir. 83

3. — *Infant Defendants—Withdrawal of Defence under Order of Court—Affidavit—O. XIX., r. 13; O. XXVI., r. 1.* The defence of two infant Defendants in an ejectment action was withdrawn under an order of Court. The other Defendants having made admissions, judgment was moved for, supported by an affidavit proving the statement of claim.

*Held*, by North, J., that the correct course where infants are parties, and their defence is withdrawn and judgment is moved for, is to prove the statement of claim by affidavit.

*Fitzwater v. Waterhouse* (52 L. J. Ch. 83) followed. *GARDNER v. TAPLING* - 33 W. R. 473

4. — *Verifying Cause of Action—Excessive Sum inadvertently Claimed.* On motion for final judgment, the Plaintiff's affidavit verified the entire of the debt claimed in the writ of summons; but the Defendant having filed an affidavit disputing part of the demand, the Plaintiff, by an affidavit in reply, and by his counsel, admitted that this part of the claim could not be sustained, and had been included in the writ by mistake:—

*Held*, that the Plaintiff was entitled to judgment for the residue. *RYE v. HAWKES*

[16 L. R. Ir. 12]

— Action for untaxed bill of costs—Reference for taxation.

See SOLICITOR—BILL OF COSTS. 1.

**XXII. PRACTICE—NEW TRIAL—** *Action remitted to the County Court for Trial of issues under 19 & 20 Vict. c. 108, s. 26—O. XXXIX. of the Rules of 1883—O. LII., r. 1—County Courts Act, 1875 (38 & 39 Vict. c. 50), s. 6.* Rules 3 and 4 of O. XXXIX., and rule 1 of O. LII. (of 1883), have no

**XXII. PRACTICE—NEW TRIAL—continued.**

application to cases sent for trial to a county court under 19 & 20 Vict. c. 108, s. 26; applications for new trials, therefore, are still regulated by the old practice. *PRITCHARD (or PRICHARD) v. PRITCHARD*

[14 Q. B. D. 55, 54 L. J. Q. B. 30, 51 L. T. 859, 33 W. R. 196]

2. — *Judgment contrary to finding of Jury—R. S. C. (1875), O. XXXVI., r. 22a.; O. XL., r. 4; O. LVIII., r. 5a.; (Compare R. S. C. (1883), O. XXXVI., r. 39; O. XL., rr. 3, 4, 5; O. LVIII., r. 5).* Under the Rules of 1875 a Judge, after leaving a question to the jury at the trial of an action, had no power to give judgment contrary to the finding of the jury on that question, and where this course had been adopted the Court of Appeal ordered a new trial. *PERKINS v. DANGERFIELD*

[51 L. T. 535, W. N. (1879) 173 (G.A., Nov. 1879)]

— County Court.

See COUNTY COURT. 1, 4.

— Divorce—Appeal—Time.

See PRACTICE—DIVORCE. 8.

— Trial at Bar—Appeal—Notice of motion.

See PRACTICE—APPEAL. 5.

**XXIII. PRACTICE—NEXT FRIEND—Incapacity**

*of Plaintiff arising after Writ issued—Amendment—O. XXXI., r. 21.* After the issue of the writ in an action, the Plaintiff became incapable of trans-

acting business, and his brother, on his behalf, made an affidavit of documents, and answered interrogatories. The Defendant took out a summons to dismiss the action for non-compliance with orders to make an affidavit of documents, and to answer interrogatories; the Plaintiff then took out a summons for leave to amend by adding a next friend:—

*Held*, by Bacon, V.C., that the Defendant was not entitled, under the above rule, to have the action dismissed, but that it still subsisted, and the Plaintiff must have leave to amend by adding a next friend; the Plaintiff to pay the costs of both summonses. *CARDWELL (VISCOUNT) v. TOMLINSON* - - - 54 L. J. Ch. 957, 53 L. T. 746, 33 W. R. 814

— Affidavit as to documents.

See PRACTICE—DISCOVERY—DOCUMENTS. 4.

— Married woman suing as *feme sole*.

See PRACTICE—COSTS. 13.

**XXIV. PRACTICE—NOTICE OF MOTION—To set**

*aside Award—Affidavits not served with—Irrregularity—Extension of Time—O. LII., r. 4; O. LXIV., r. 7; O. LXX., r. 1.* Where notice of motion to

set aside an award, which would expire on the last day of the sittings next after such award, was served without any copy of the affidavit in support of the motion:—*Held*, by Grove and Mathew, J.J., that, though the Court may not have power to enlarge the time for making the application under O. LXIV., r. 7, there is power, under O. LXX., r. 1, to hear the application, after the expiration of the time, if the Court think fit.

*Hampden v. Wallis* (Col. 315) followed. *WIGGESTON (or WYGGESTON) HOSPITAL & STEPHENSON* - - - 54 L. J. Q. B. 248, 53 L. T. 107, 33 W. R. 555

**XXIV. PRACTICE — NOTICE OF MOTION — continued.**

— Bankruptcy — Appeal from rejection of proof.

See *BANKRUPTCY—APPEAL*. 6.

**XXV. PRACTICE — PARTIES — Adding Defendant—***O. XVI., r. 11.*] One of two executors having absconded, the other executor sued a mortgagee. The Court refused on the application of the Defendant to add the absconding executor as Defendant. *DRAKE v. HARTOPP* 28 Ch. D. 414, [54 L. J. Ch. 434, 51 L. T. 902, 33 W. R. 410]

2. — *Adding Plaintiffs—Rules of the Supreme Court*, 1883, *O. XVI., r. 11.*] In an action by a company, lessees for a long term of eleven houses, of which ten were unlet and in their possession when the writ was issued, and by their tenant of the remaining house as co-Plaintiff, for an injunction and damages in respect of an alleged nuisance from noise; the tenant, after delivery of the statement of claim and notice of trial, refused to go on with the action as co-Plaintiff. The other ten houses having in the meantime been let, the Plaintiff company applied at the trial for leave to amend by adding as co-Plaintiffs two of the new tenants, who consented to be added.

Application granted as being within the discretion given by Rules of the Supreme Court, 1883, *O. XVI., r. 11*, of allowing the names of any parties, whether Plaintiffs or Defendants—"whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter"—to be added. *HOUSE PROPERTY AND INVESTMENT CO. v. H. P. HORSE NAIL CO.* - 29 Ch. D. 190, 54 L. J. [Ch. 715, 52 L. T. 507, 33 W. R. 562]

3. — *Adding Plaintiff—Rules of Supreme Court*, 1883, *O. XVI., r. 11.*] The tenant for life of a trust fund brought an action against the trustees to make them liable for an improper investment. The trustees by their defence alleged that they had made the investment in question at the request of the Plaintiff. The Plaintiff thereupon applied for leave to amend by adding as co-Plaintiff his son, who had a reversionary interest in the fund, and Bacon, V.C., made an order giving him leave:—

*Held*, on appeal, that the order must be discharged, for that *O. XVI., r. 11*, does not authorize the allowing a Plaintiff who has no right to sue, to amend by joining as co-Plaintiff a person who has such right. *WALCOTT v. LYONS* 29 Ch. D. [584, 54 L. J. Ch. 847, 52 L. T. 399 (C.A.)]

4. — *Adding Plaintiff—Consent—Stay of Proceedings—O. XVI., r. 11.*] Where a Defendant seeks to make the Plaintiff join a third party as co-Plaintiff or co-Defendant, he is not entitled to have the proceedings stayed until the Plaintiff obtains the consent in writing of the third party or be joined as co-Plaintiff, or joins him as co-Defendant. So *held*, by Grove and Denman, J.J. *JACKSON v. KRÜGER* 54 L. J. Q. B. 446, 52 L. T. 962

5. — *Change of—Trustee in Bankruptcy—Adoption by Trustee of Bankrupt's Defence—Costs.*] An interlocutory order for an injunction and receiver having been made against the Defendants in an action, they gave notice of appeal, and

**XXV. PRACTICE—PARTIES—continued.**

shortly afterwards became bankrupt. An order was made for carrying on the proceedings against their trustee. The trustee gave notice to the Plaintiff that he should not proceed with the appeal. Shortly after this the trustee entered an appearance and called for a statement of claim. He declined to undertake to pay the costs of the appeal incurred by the Plaintiff before the notice that the appeal would not be proceeded with, and the appeal came on that the question as to the costs might be decided:—

*Held*, that the appeal must be dismissed with costs to be paid by the trustee, for that having adopted the defence of the bankrupts he had placed himself in their position as to the whole of the action, and could not reject part of the proceedings in it. *BORNEMAN v. WILSON* 28 Ch. D. 53, [54 L. J. Ch. 631, 51 L. T. 728, 33 W. R. 141 (C.A.)]

6. — *Change of Parties—Judgment obtained by Executors—Death of Co-Plaintiff—Execution issued by Survivors.*] Where judgment is obtained by several executors, and one of them dies after the entering of judgment, the survivors may issue execution in the name of all the Plaintiffs, and it is unnecessary to have any order for leave to do so. *BAIRD v. THOMPSON* - 14 L. R. Ir. 497

7. — *Joinder—Husband and Wife—Married Women's Property Act*, 1882 (45 & 46 Vict. c. 75), s. 1, sub-s. 2—*Cause of Action before Act.*] A married woman may, by virtue of the Married Women's Property Act, 1882, sue alone for a tort committed before that Act came into operation. *WELDON v. WINSLOW* 13 Q. B. D. 784, 53 L. J. [Q. B. 528, 51 L. T. 643, 33 W. R. 219 (C.A.)]

8. — *Partner—Action against, in Name of Firm—Appearance by one Partner only—Judgment by Consent against Partner appearing—Application to issue Execution against other Partner—Amendment of Judgment—Rules of the Supreme Court in force before 1883, O. XII., r. 12; O. XLII., r. 8; O. LIX., r. 2.*] To a writ issued against R. & Co., and claiming damages for libel, an appearance was entered for "R. trading as R. & Co., the Defendant in this action." The statement of claim was delivered against "R. sued as R. & Co.," and the proceedings continued in that form down to judgment. At the trial by consent a verdict was found for the Plaintiff for 40s., and judgment entered accordingly. After issuing execution against R., the Plaintiff, under the rules in force before 1883, took out a summons for liberty to amend the judgment (and the pleadings if necessary) by striking the words "R. sued as" from the title of the action; to enter judgment against R. & Co. so as to correspond with the writ, and to issue execution against C., on the ground that C. had been since discovered to be a partner in the firm:—

*Held*, affirming the decision of the Court of Appeal (*sub. nom. Munster v. Raillon*), 11 Q. B. D. 435, 52 L. J. Q. B. 409, 48 L. T. 624, 31 W. R. 380, 1883 Dig. col. 307, that the proceedings having been conducted against R. only, and judgment having been signed by consent against him alone, the judgment could not be converted into a judgment against the firm. *MUNSTER v. COX*

[10 App. Cas. 680, 53 L. T. 474 (H. L., E.)]

**XXV. PRACTICE—PARTIES—continued.**

— Adding Plaintiff—Stranger suing on covenant.

See HUSBAND AND WIFE—SEPARATION DEED. 3.

— Charity — Action for account — Attorney-General.

See CHARITY. 1.

— Incapacity of Plaintiff—Adding next friend.

See PRACTICE—NEXT FRIEND.

— Married woman suing as *feme sole*.

See PRACTICE—COSTS. 13.

— Partition action.

See PARTITION. 2.

— Pauper.

See PRACTICE—PAUPER.

— Reference of action of tort—Death of party before award.

See ARBITRATION. 1.

— Third party.

See PRACTICE—THIRD PARTY.

— Trustee in bankruptcy—Suing in official name—New trustee appointed.

See PRACTICE—COSTS. 18.

**XXVI. PRACTICE—PAUPER—Application for leave to Petition in form *pauperis*—Motion or Summons—O. XVI., rr. 22, 24, 26—O. LII., r. 1—*Infant's Custody Act*, 1873 (36 & 37 Vict. c. 12).]** Leave to present a petition in form *pauperis* will be granted on motion, but such leave may also be obtained by summons in Chambers. *Re LEWIN*

[33 W. B. 128, W. N. (1884) 224

2. — *Taxation of Plaintiff's Costs—Remuneration for Solicitor and Fees for Counsel—Rules of Supreme Court*, 1883, O. XVI., rr. 24, 25, 26, 27, 31.] Under the Rules of the Supreme Court, 1883, O. XVI., rr. 24, 25, 26, 27, 31, a successful Plaintiff in an action in form *pauperis* tried before a Judge and jury is entitled upon taxation as against the Defendant to costs out of pocket only, and cannot be allowed anything for remuneration to his solicitor or fees to counsel. *CARSON v. PICKERSGILL* 14 Q. B. D. 859, 54 L. J. Q. B. 312, 484;

[52 L. T. 950, 33 W. B. 589, 49 J. P. 612 (C.A.)

— Solicitor to—Negligence—Liability.

See SOLICITOR—LIABILITY. 2.

**XXVII. PRACTICE—PAYMENT INTO COURT—**

*Admission—Evidence.*] Trust funds may be ordered to be brought into Court by the trustee, an accounting party, upon admissions contained in letters written before action brought that he has received the money, and a recital to that effect contained in the settlement, his execution of which as trustee has been proved, although there is no formal admission in his pleadings or affidavits that he has received and holds the money. So held, by Chitty, J. *HAMPDEN v. WALLIS* (No. 2) 27 Ch. D. 251, 54 L. J. Ch. 1175,

[51 L. T. 357, 32 W. B. 977

2. — *Admission—Sufficiency of—O. XXXII., r. 6.*] The Plaintiff and Defendant were trustees of a settlement, and the Defendant, in a letter to the Plaintiff, written before action brought, stated the manner in which he had dealt with a part of the trust funds. Such dealing amounted to a breach of trust, and the Plaintiff thereupon

**XXVII. PRACTICE—PAYMENT INTO COURT—continued.**

brought the action to have the trusts of the settlement executed and the fund replaced, and shortly after issuing the writ took out a summons for an order on the Defendant to pay the amount into Court, and exhibited the letter to his affidavit in support of the summons. This affidavit was not answered by the Defendant.

Held, affirming the decision of Chitty, J., that this amounted to a sufficient admission by the Defendant upon which to order him to bring the amount into Court. *PORRETT v. WHITE* 31 Ch. D. 512, 55 L. J. Ch. 79, 53 L. T. 514, 34 W. B. 65 (C.A.)

3. — *Denial of Liability—Action for several Breaches of Contract—Payment into Court in respect of one Breach—Acceptance in Satisfaction of all Demands—Rules of the Supreme Court*, 1883, O. XXII., rr. 6, 7.] In an action for breach of contract assigning two distinct breaches, the Defendants pleaded denying the breaches, and alternatively paid money into Court with regard to one of the breaches. The Plaintiffs gave notice under O. XXII., r. 7, that they accepted the money paid into Court in full satisfaction of the causes of action in the statement of claim:—Held, that Plaintiffs were entitled, without proceeding to judgment, to their costs of the action; for by accepting the money paid into Court in satisfaction of all their alleged causes of action they had in effect discontinued or withdrawn the action as to the breach, in respect of which the money was not paid in.—Decision of the Queen's Bench Division (13 Q. B. D. 897, 51 L. T. 822) affirmed. *M'ILLWRAITH (or M'ILLWRAITH) v. GREEN* [14 Q. B. D. 766, 54 L. J. Q. B. 41, 52 L. T. 82 (C.A.)

4. — *Mistake in manner of Payment—Defence denying Liability—Taking Money out of Court—Continuing Proceedings—O. XXII., rr. 5, 6—S. C. Funds Rules*, 1884, rr. 30, 44.] The Defendants in an action to recover £1000, paid £167 into Court without following the regulations prescribed by the above rules, and, on the same day, wrote to the Plaintiff's solicitor, stating that they had that day paid £167 into Court to the credit of the action, "in discharge of the Plaintiff's claim in this action." On the same day they delivered their defence, which contained a denial of liability to the Plaintiff, and stated that the sum paid into Court was sufficient to satisfy the Plaintiff's claim if any should be established. The Plaintiff took the money out of Court, and then continued the proceedings in the action.

Held, affirming the decision of Pearson, J., that, under the circumstances, the Plaintiff must either keep the money, and let all further proceedings, except as to costs, be stayed, or pay the money into Court again, and go on with the action. *Re STAMFORD (EARL OF). SAVAGE v. PAYNE* 53 L. T. 511, 33 W. B. 909, W. N. (1885) 154, 173 (C.A.)

5. — *Payment into Court for Debt and Costs—Acceptance—Costs—G. O. (Jr.) XXX., r. 4—Appendix B, Form 6.*] In an action for a money demand, the Defendant pleaded an agreement, after action brought, by the Plaintiffs to take a certain sum for debt and costs, and brought that amount into Court on foot of debt and costs. The Plaintiffs' solicitor served notice on the Defendant accepting the sum so paid into Court "in satisfac-

**VII. PRACTICE—PAYMENT INTO COURT—continued.**

n of the Plaintiffs' claim, in respect of which it is paid in":—

*Held*, that the Plaintiffs were not entitled to pay costs beyond the sum lodged in Court. **MOBODY v. GALLAHER** - 16 L. R. Ir. 336

— Damages—Debtors Act.

See PRACTICE—DIVORCE. 4.

— Defence denying liability—Embarrassment.

See PRACTICE—PLEADINGS. 6.

— Sale—Mortgage debt—Discharge of incumbances.

See VENDOR AND PURCHASER—CONVEYANCE. 1.

— Salvage action—Plea of tender without payment into Court.

See SHIP—SALVAGE. 1.

**VIII. PRACTICE—PAYMENT OUT OF COURT**

*Infant—Small Sum payable to—Post Office Savings Bank.* Small sums of money representing infants' shares in a fund in Court may be ordered to be paid out by the Paymaster-General to the Post Office Savings Bank to accounts in infants' names. **ELLIOTT v. ELLIOTT**

[54 L. J. Ch. 1142]

— Administration—Married woman entitled to small share.

See HUSBAND AND WIFE—WIFE'S PROPERTY. 1.

— County Court—Mistake—Liability of Registrar and High Bailiff.

See COUNTY COURT. 5.

— Lands Clauses Act.

See LANDS CLAUSES ACT. 7, 9—11.

— Money in Court subject to settlement by statute.

See SETTLED LAND ACTS. 7.

— Order for—Appeal from—Stay of proceedings.

See PRACTICE—STAYING PROCEEDINGS. 2.

**XIX. PRACTICE—PLEADINGS—Claim—**

*Notice in lieu of—G. O. (Ir.) xx. r. 2—Indorsement—Liquidated demand—Embarrassment.* In an action for money alleged to have been obtained from the Plaintiff by fraudulent misrepresentation, the nature of which misrepresentation and the particulars of the sum sued for being set out in the indorsement of the writ of summons, the Plaintiff delivered a notice in lieu of statement of claim under G. O. xx., r. 2;—

*Held*, sufficient, and motion by the Defendant to compel a statement of claim to be delivered refused. **YOUNG v. BEATTIE** - 16 L. R. Ir. 192

2. — *Claim—Particulars of Demand* Where a Plaintiff claims to recover a definite sum made up of a number of items he will be ordered to give particulars of demand, though he will not be ordered to do so if he only claims an account.

The Plaintiffs by their statement of claim alleged that they and their testator had paid sums of money under a contract of suretyship under which the Defendant was also liable, and that, after deducting the contributions received from other quarters, the balance paid by them

**XXIX. PRACTICE—PLEADINGS—continued.**

was £16,233; that the Defendant had paid nothing, and was liable to pay to the Plaintiffs one half of this balance, and the Plaintiffs claimed payment of £8116. The Defendant, before putting in his defence, applied for an order that the Plaintiffs might give particulars of the sums making up the £16,233. The application was refused by Mr. Justice Pearson:—

*Held*, on appeal, that, as the Plaintiffs did not ask merely for an account, but claimed payment of a definite sum, they must give particulars of demand. **BLACKIE v. OSMASTON** 28 Ch. D. 119, [54 L. J. Ch. 473, 52 L. T. 6, 33 W. R. 158 (C.A.)]

3. — *Claim—Particulars of Breaches of Trust—O. XIX., rr. 6, 7.* In an administration action the Plaintiff, a specific legatee of leaseholds, alleged that the Defendant, an executor, had, "in various ways, misapplied parts of the rents and profits of the leaseholds, and thereby injured the Plaintiff and committed breaches of trust," and then went on to specify one misapplication of a sum of £25:—*Held*, by Bacon, V.C., on a summons by the Defendant, that, unless the Plaintiff furnished particulars within seven days the general allegations should be struck out of the claim. **Re ANSTICE. ANSTICE v. HIBELL (or HIBBELL)**

[54 L. J. Ch. 1104, 52 L. T. 572, 33 W. R. 557]

4. — *Embarrassing Claim—Ejectment for Non-payment of Rent—Claim—General allegation of Plaintiff's derivative Title—Judicature (Ir.) Act, Sched.-rule 23—G. O. (Ir.) XVIII. r. 1.* In an action to recover possession of land for non-payment of rent by a Plaintiff claiming under a derivative title, the statement of claim set out a lease and that the Defendant entered into possession under it, and then stated that, on the death of the lessor, all his estate and interest came to and was now vested in the Plaintiff. The Defendant having moved to set aside the statement of claim as embarrassing:—

*Held* (affirming the decision of the Exchequer Division), that the statement of the devolution of the Plaintiff's title was sufficient.

**Lord Kenmare v. Casey** (18 Ir. L. T. R. 77) followed and approved of. **BEATTY v. LEACY**

[16 L. R. Ir. 132 (C.A.)]

5. — *Embarrassing Counterclaim—Exclusion of—O. XXI., r. 15.* A tenant for life and other *cestuis que trustent* having brought an action against the trustees of a settlement for breaches of trust, one of the Defendants alleged as a defence that the breaches of trust had been sanctioned by the tenant for life; and also set up a counter-claim upon a bill of exchange for £45, claiming payment of that amount, and that the income of the tenant for life, arising from the property subject to the settlement, might be applied towards payment of the £45, and any other sums which the trustee might be ordered to pay:—*Held*, by Bacon, V.C., that the counter-claim must be struck out. **FENDALL v. O'CONNELL** (No. 1) - 52 L. T. 538

6. — *Embarrassing Defence—Payment into Court without admitting Liability—Rules of Supreme Court, 1875, O. XXX., r. 1.* Where the Defendant succeeds at the trial on an issue on money paid into Court under O. xxx., r. 1, of the Rules of 1875, with a defence stating such pay-

**XXIX. PRACTICE—PLEADINGS—continued.**

ment as an alternative defence to the action, he is entitled to have judgment entered for him in the action.—In an action for trespass in breaking and entering the Plaintiff's land, the Defendants paid money into Court under O. xxx., r. 1, of the Rules of 1875, and in their defence denied the Plaintiff's possession of the land, and also stated that without admitting any kind of liability the sum paid into Court was sufficient to satisfy any damage which the Plaintiff might have sustained in consequence of any acts of theirs. The Plaintiff joined issue upon these defences, but failed at the trial to establish any damages exceeding the sum paid into Court, though he succeeded on the other issue. The Court of Appeal treated such defence of payment into Court as an alternative payment, and as it went to the whole cause of action:—*Held*, reversing the decision of Williams, J. (1 C. & E. 242), that the Defendants were entitled to judgment. *WHEELER v. UNITED KINGDOM TELEPHONE COMPANY* 13 Q. B. D. 597, 53 L. J. [Q. B. 466, 50 L. T. 749, 33 W. R. 295 (C.A.)]

7. — *Embarrassing Defence—Writ claiming Recovery of Land—Joinder of other Claims without Leave—Omission of Claim to recover Land from Statement of Claim—Objection by Defence—O. xviii., r. 2; O. xx., r. 4; O. xix., r. 27; O. xxv., r. 2.]* The Plaintiff having joined a claim for recovery of land with other claims without leave of the Court, by his statement of claim altered his claim for relief by omitting the claim for recovery of land. The Defendant by his defence raised the objection that the writ of summons was issued without leave of the Court.

*Held*, that the defence ought not to be struck out as embarrassing.

*Semble*, (1) an objection that a writ joining a claim to recover land with other claims has been issued without leave of the Court is properly pleaded in the defence:

(2) That the Plaintiff cannot cure the irregularity in his writ by omitting the claim for recovery of land from his statement of claim:

(3) That to cure the irregularity the writ must be amended; and

(4) That such amendment cannot be made without the Defendant's consent. *WILMOTT v. FREEHOLD HOUSE PROPERTY Co. (No. 1)*

[51 L. T. 552 (C.A.)]

8. — *Striking out Claim—No reasonable cause of Action—O. xxv., rr. 2, 4.]* In a statement of claim certain building agreements were set out, and it was alleged that by reason of the Defendant having wrongfully entered into possession of the Plaintiff's land and building materials, he had been unable to carry out his agreements and had thereby suffered loss. The Plaintiff claimed specific performance of the agreements and damages.

*Held*, by Bacon, V.C., that a motion to strike out the statement of claim on the ground that it disclosed no reasonable cause of action must be dismissed. *BODDINGTON v. REES* 52 L. T. 209

9. — *Striking out amended Statement of Claim—O. xxv., r. 4.]* A Defendant who has delivered a defence to a statement of claim, cannot, when the Plaintiff afterwards delivers an amended statement of claim, which still shows

**XXIX. PRACTICE—PLEADINGS—continued.**

the same cause of action against the Defendant, apply to strike out the amended statement of claim on the ground that it discloses no reasonable cause of action against him. *JENKINS v. REES* - - - 33 W. R. 929, W. N. (1885) 170

— Amendment after evidence put in.

*See PRACTICE—AMENDMENT.*

— Counterclaim—Set-off—Balance under £20 recovered.

*See PRACTICE—COSTS. 5.*

— Default of—Judgment on.

*See PRACTICE—MOTION FOR JUDGMENT.*

— Defence denying liability—Payment into Court.

*See PRACTICE—PAYMENT INTO COURT. 3, 4.*

— Defence of *res judicata*.

*See ESTOPPEL. 3.*

— Embarrassing—Claim of indemnity.

*See PRACTICE—THIRD PARTY. 2.*

— False imprisonment—Acquittal of plaintiff.

*See FALSE IMPRISONMENT.*

— Fraud—Particulars of—Opening settled account—Discovery.

*See PRACTICE—DISCOVERY—DOCUMENTS. 5.*

— Mandamus—Return of unconditional compliance.

*See PRACTICE—MANDAMUS.*

— Striking out counter-claim—Action by liquidator.

*See COMPANY—VOLUNTARY WINDING UP. 1.*

**XXX. PRACTICE—POINT OF LAW—Dismissal**

*of Action—O. xxv., rr. 1, 2, 3.]* An action having been by the consent of the parties set down for hearing under Rules of Supreme Court, 1883, O. xxv., r. 2, upon a "point of law" raised by the defence, and the point having been decided in favour of the Defendant, the Judge, as the decision substantially disposed of the whole action, dismissed the action under r. 3, and with costs, by analogy to the former practice on demurrer. *O'BRIEN v. TYSSSEN* - 28 Ch. D. 372 [54 L. J. Ch. 284, 51 L. T. 814, 33 W. R. 438]

2. — *Dismissal of Action—O. xxv., rr. 2, 3.]*

The decision of the Judge on a "point of law" raised in an action under Rules of Supreme Court, 1883, O. xxv., r. 2, having substantially disposed of the whole action, the action was under r. 2, dismissed with costs. *PEROTVAL v. DUNN* - - 29 Ch. D. 128, 54 L. J. Ch. 570, [52 L. T. 330]

3. — *Setting down for hearing before Trial*

*—Validity of Agreement—O. xxv., r. 2.]* The pleadings, in an action brought to determine questions of disputed accounts respecting the joint traffic of two railways, disputed the validity of an agreement. The Plaintiffs having moved under the above rule that the points of law raised by the pleadings might be set down for hearing forthwith, and be disposed of before the trial of the action:—

*Held*, by Chitty, J., that the application should be granted, the case being a proper one for exer-

**XXX. PRACTICE—POINT OF LAW—continued.**

cising the jurisdiction conferred by the above rule. *LONDON, CHATHAM, & DOVER RY. CO. v. SOUTH-EASTERN RY. CO.* - - - 53 L. T. 109

**XXXI. PRACTICE—RECEIVER—Action for, in Chancery Division, by Creditor who has obtained judgment in Queen's Bench Division.]** *PROSKAUER v. SIEBE* - - - W. N. (1885) 159

2. — *Equitable Execution—Form of Order—Security—Costs.*] In an action for equitable execution a judgment creditor obtained the appointment of a receiver for the purpose of creating a charge upon the debtor's property subject to prior incumbrances, but not for the purpose of entering into possession or receiving the rents and profits. *Held*, by Bacon, V.C., that the receiver need not give security, the Plaintiff and the receiver undertaking not to act without leave from the Court. Costs to be costs in the action. *HEWETT v. MURRAY* - - - 54 L. J. Ch. 572, [52 L. T. 380, W. N. (1885) 53]

3. — *Equitable Execution—Rules of Supreme Court, 1883, O. XLII., rr. 4, 28—Judicature Act, 1873, s. 25, sub-s. 8.*] Under the general power to appoint receivers given by the Judicature Act, 1873, r. 25, sub-s. 8, and having regard to Rules of Supreme Court, 1883, O. XLII., rr. 4 and 28, the Court has jurisdiction to enforce a judgment for payment of money into Court by a defaulting trustee, by the appointment of a receiver of his equitable interest in property in this country; and order accordingly where, from the debtor being out of the jurisdiction, service of a writ of attachment could not be effected. *Re CONEY.* *CONEY v. BENNETT* - 29 Ch. D. 993, 54 L. J. Ch. [1130, 52 L. T. 961, 33 W. R. 701]

4. — *Jurisdiction—Before Probate—Chancery Division—Judicature Act, 1873, s. 25 (viii).*] Any judge of the High Court has power, under the above section, to appoint a receiver of a deceased's estate (before grant of probate or administration), notwithstanding the absence of a *lis pendens*, but applications for any such order being on the way to probate proceedings are properly made in the Probate Division, and if made elsewhere will not be encouraged. *Re PARKER.* *DEARING v. BROOKS* - - - 54 L. J. Ch. 694

5. — *Jurisdiction—Foreigner out of the Jurisdiction—Service of Notice of Appointment of Receiver.*] The Plaintiff having obtained judgment against the Defendant, a foreigner resident out of the jurisdiction, a summons was issued by leave of a judge at chambers calling on the Defendant to shew cause why a receiver should not be appointed. On an application for leave to serve this summons on the Defendant out of the jurisdiction:—*Held*, by Coleridge, C.J., and Smith, J., that there was no jurisdiction to grant such leave. On appeal, the Court of Appeal gave no decision on the question of jurisdiction, but dismissed the application on the ground that the Plaintiff had failed to shew that under the circumstances of the case the order asked for was necessary. *WELDON v. GOUNOD* 15 Q. B. D. 622

6. — *Separate Estate vested in Trustees—Married woman—Judgment against—Prior charges—Judicature Act (Ireland), 1877, s. 28, sub-s. 8.*] In an action against a married woman

**XXXI. PRACTICE—RECEIVER—continued.**

alleged to be possessed of separate estate, no statement of defence being delivered, the master, by his report, found that she was entitled to separate estate vested in trustees, and subject to certain charges. The report being confirmed, the Plaintiff was appointed receiver without security of the residue of the income of the separate estate, after payment of the prior charges, the Plaintiff undertaking to act without commission.

Form of proceedings and order. *M'GARRY v. WHITE* - - - 16 L. R. Ir. 322

— Appointment of, by mortgagee—Distress—Injunction.

See LANDLORD AND TENANT—DISTRESS. 3.

— Costs—Priority—Action by debenture-holders.

See COMPANY—DEBENTURES. 1.

— Equitable execution—Priority—Notice to trustees.

See MORTGAGE—PRIORITY. 11.

— Judgment—Limitation.

See LIMITATIONS, STATUTES OF. 12.

— Liquidator appointed as—Action by debenture-holders.

See COMPANY—DEBENTURES. 2.

— Official receiver in bankruptcy.

See BANKRUPTCY—OFFICIAL RECEIVER.

**XXXII. PRACTICE—REFEREE—“Special Referee”—Consent of Parties—Official Referee—“Upon such Terms as may be thought proper”—Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 56, 57—O. XXXVI., r. 7a.**] The Court or a judge has no power to refer any cause or matter to a special referee without the consent of the parties.

Where one of the parties to a cause objected to a reference to a special referee, the judge, in ordering the cause to be tried by an official referee, ordered that “the extra costs occasioned by a trial before an official referee instead of a special referee be reserved.” *Held*, by Grove, J., and Huddleston, B., that the judge had jurisdiction to insert these terms in the order. *LONDON AND LANCASHIRE FIRE INSURANCE CO. v. BRITISH AMERICAN ASSOCIATION (or BRITISH AMERICAN ASSURANCE CO.)* 54 L. J. Q. B. 302, 52 L. T. 385

— Admiralty action.

See PRACTICE—ADMIRALTY. 3, 5.

— Costs—Order of reference—“Event.”

See PRACTICE—COSTS. 9, 10.

— Costs—Power over.

See ARBITRATION. 3.

**XXXIII. PRACTICE—SEQUESTRATION—Corporation—Disobedience to Injunction—O. XLI., r. 5; O. XLII., r. 31; O. XLIII., r. 6; O. L., r. 11; O. LII., r. 4.]** An injunction to restrain a local sanitary authority from polluting a stream having been granted in January, with a suspension for three months of the operation of the order, the Court in April refused to extend the time of suspension.

Upon motion by the Plaintiff, under O. XLII., r. 31, for leave to enforce the restraining order against the sanitary authority by sequestration.

*Held*, by Chitty, J., (1) that the order of

**XXXIII. PRACTICE—SEQUESTRATION—contd.**

January being a prohibitive order, and not (from the fact that the operation was suspended for three months) an order requiring the sanitary authority to do an act, O. XLII., r. 5, requiring service of a copy of the order with a memorandum stating the time within which the act was to be done did not apply, and (2) that notwithstanding O. XLIII., r. 6, the Plaintiff was proceeding regularly in applying for leave to issue sequestration. *SELOUS v. CROYDON RURAL SANITARY AUTHORITY* - 53 L. T. 209, W. N. (1885) 105

— Previous writ of attachment—Personal service.

See PRACTICE—DIVORCE. 10.

**XXXIV. PRACTICE—STAYING PROCEEDINGS**

—*Multiplicity of Actions—Actions by Company—Security for Costs—Solicitors ordered personally to pay Costs.* *LADYWELL MINING CO. v. HUGGONS* [W. N. (1885) 55]

2. — *Pending Appeal—Payment out of Fund in Court—Rules of Supreme Court, 1883, O. LVIII., r. 16.* In the absence of special circumstances it is not the practice of the Court to retain in Court pending an appeal a fund which has been ordered to be paid out, because there is an appeal from the order.

An order directing the payment of a fund out of Court to the Plaintiff having been made just before the commencement of the Long Vacation, and an appeal having been presented, a suspension of the payment out was granted over the Long Vacation, in order to enable the Appellant to apply to the Court of Appeal.

*Wilson v. Church* (12 Ch. D. 454) and *Walburn v. Ingilby* (1 My. & K. 79) considered.

On appeal, it being shewn that the Plaintiff had been abroad for two years, and that the applicant could not discover his address, it was held that payment out ought to be stayed if the applicant would give security to pay to the Plaintiff interest at 4 per cent. on the present value of the funds in Court, and to make good to the Plaintiff, if the appeal was unsuccessful, the difference between the highest market price of the investments at any time before the hearing of the appeal and their market price on the day of the hearing of the appeal. *BRADFORD v. YOUNG. Re FALCONAR'S TRUSTS* 28 Ch. D. 18, 54 L. J. Ch. [368, 51 L. T. 550, 33 W. R. 159 (C.A.)]

3. — *Pending Appeal to House of Lords—No Special Grounds alleged.* Execution for costs pending an appeal from the Court of Appeal to the House of Lords will not be stayed, unless evidence be adduced to shew that the respondent to the appeal will be unable to repay the amount levied by execution, if the appellant be successful before the House of Lords. *BARKER v. LAVERY*

[14 Q. B. D. 769, 54 L. J. Q. B. 241, 33 [W. R. 770 (C.A.)]

4. — *Pending Appeal—Affidavit.* The power to stay execution pending an appeal is purely discretionary, and may be exercised in a proper case though the application is not made upon affidavit. Execution stayed pending an appeal by a railway company Defendants from an order refusing a new trial, on the terms of their lodging in Court the amount of the verdict and

**XXXIV. PRACTICE—STAYING PROCEEDINGS**

—*continued.*

a sum to cover costs, although the application was not grounded upon affidavit stating special circumstances.

*Barker v. Lavery* (*supra*) distinguished. *McCARNEY v. CORK STEAM PACKET CO.*

[16 L. R. Ir. 194]

5. — *Reference to Arbitration—Railway Passengers Assurance Co.'s Act, 1864 (27 & 28 Vict. c. CXXV.), ss. 3, 16, 33.* Sects. 3 and 16 of the above Act provide for the reference to arbitration of differences arising on contracts of assurance, at the request of either party.

Sect. 33 provides that if a policy-holder begins an action against the company respecting the matters to be referred to arbitration under the Act, the Court or a judge, on application by the company after appearance, "upon being satisfied that no sufficient reason exists why the matter cannot be or ought not to be referred to arbitration, and that the company were at the time bringing the action, and still are, ready and willing to concur in all acts necessary and proper for causing the matters to be decided by arbitration," may make an order staying all proceedings in the action.

The representatives of a policy-holder made a claim against the company, which they disputed, and did not give notice that they required the question to be referred to arbitration. The claimants then brought an action, whereupon the company took out a summons to stay proceedings.

Held, that the provisions of sects. 3 and 16 apply to cases in which a reference to arbitration is required before an action is begun; that sect. 33 applies to cases in which an action has been begun before a reference is asked for, and that in such cases the party claiming has a right to bring an action, and that it must then be a question of discretion in each case whether the action should or should not be stayed.

*Hodgson v. Railway Passengers Assurance Co.* (9 Q. B. D. 188) explained.

Decision of *Matthew and Smith, JJ.* (52 L. T. 549) reversed. *FOX v. RAILWAY PASSENGERS ASSURANCE CO.* 54 L. J. Q. B. 505, 52 L. T. 673 [(C.A.)]

— Adding Plaintiff—Consent.

See PRACTICE—PARTIES. 4.

— Administration action—Before decree.

See EXECUTOR—DE SON TORT. 1.

— Arbitration clause in partnership articles—

See PARTNERSHIP. 1.

— County court—Action of tort—Action under

Employers' Liability Act.

See MASTER AND SERVANT. 15.

— Foreclosure order—Alteration.

See PRACTICE—JUDGMENT. 4.

— Lancaster court—Jurisdiction.

See DUCHY OF LANCASTER. 2.

— *Lis alibi pendens*—Action *in rem*.

See PRACTICE—ADMIRALTY. 17.

**XXXV. PRACTICE—THIRD PARTY—Counterclaim by Third Party against Plaintiff—Rules of Supreme Court, 1883, O. XVI., rr. 48, 52, 53; O. XII., r. 3.]** The Court has no power to give a third party



**XXXV. PRACTICE—THIRD PARTY—continued.**

who has been served with notice by a Defendant under O. XVI., r. 48, leave to file a counter-claim against the original Plaintiff. *EDEN v. WEARDALE IRON AND COAL COMPANY.* 28 Ch. D. 333, 54 [L. J. Ch. 384, 51 L. T. 726, 33 W. R. 241 (C.A.)]

2. — *Indemnity—Rules of Supreme Court, 1883, O. XVI., r. 48—Embarrassing Pleading.* In giving leave to a Defendant to serve notice of claim for contribution or indemnity on a third party, the Court will not consider whether the claim is a valid one, but only whether the claim is *bonâ fide*, and whether if established it will result in contribution or indemnity.

The Plaintiff, who was the owner of stock in a public company registered in her name, ascertained that it had been transferred to F. by virtue, as she alleged, of a forged transfer. She brought an action against the company to have her name reinstated in the books of the company. The company obtained leave to serve F. with a claim for indemnity:—

*Held*, by the Court of Appeal, without deciding that the claim for indemnity was valid, that leave to serve F. was rightly given.

*Speller v. Bristol Steam Navigation Company* (13 Q. B. D. 96, 53 L. J. Q. B. 322, 50 L. T. 400, 32 W. R. 670, 5 Asp. M. C. 228) distinguished. *CARSHORE v. NORTH-EASTERN RAILWAY COMPANY* [29 Ch. D. 344, 54 L. J. Ch. 760, 52 L. T. 232, 33 [W. R. 420 (C.A.)]

**XXXVI. PRACTICE—TRANSFER—Action transferred to Admiralty Division—Salvage—O. XXXVI., r. 6—O. XLIX., r. 3.]** Although an action in which the sole question is one of salvage may be properly transferred to the Admiralty Division, such a transfer should not be ordered where there are other questions in the action capable of being tried by a jury. *OCEAN STEAMSHIP CO. v. ANDERSON, TRITTON AND CO.* 33 W. R. 536 (C.A.)

2. — *Company in Liquidation—District Registry—O. XLIX., r. 5—O. XXXV., r. 16.]* *RE EBERSLEY'S HOTEL CO.* — W. N. (1884) 252

— *Administration action—Insolvent estate.*

*See* BANKRUPTCY — ADMINISTRATION, 2, 3.

— *Costs—Correspondence before motion for transfer.*

*See* PRACTICE—COSTS. 25.

**XXXVII. PRACTICE—TRIAL—Jury—Action assigned to Chancery Division—Joinder of Cause of Action not so assigned—Rules of Supreme Court, 1883, O. XXXVI., rr. 3, 6.]** The Plaintiff commenced an action in the Chancery Division alleging that the Defendant was trustee of a sum of £700 for her, and claiming payment of that sum with interest, and, if necessary an account of profits made by the Defendant by using it in his business, and also claiming the return of certain chattels, or their value, and damages for their detention. The Defendant denied the trust, stated that the money had been lent to him by the Plaintiff, and long ago repaid, and denied that he ever had any chattels of the Plaintiff in his possession. The Plaintiff, after the defence had been put in, applied to have the issues of fact tried by a jury:—

*Held*, by Pearson, J., and by the Court of Ap-

**XXXVII. PRACTICE—TRIAL—continued.**

peal, that the action came within O. XXXVI., r. 3, and not within rule 6 of the same Order. That the action therefore was to be tried by a judge without a jury, unless it could be made out that it was better to have it tried by jury, and that in the present case this was not shewn. *GARDNER v. JAY* 29 Ch. D. 50, 54 L. J. Ch. 529, 762; 52 L. [T. 181, 395, 33 W. R. 470 (C.A.)]

2. — *Jury—Change of Place of trial—Delay—Costs—O. XXXVI., rr. 4, 6.]* An action brought in the Chancery Division for obstruction of water rights was set down on the 27th of May, and briefs were delivered on the 7th of July. On motion by the Defendants on the 9th of July that the trial might take place at Manchester (the *locus in quo*, and where all the witnesses resided) before a judge and jury:—

*Held*, by Bacon, V.C., that the Defendants had an absolute right to trial by jury; that Manchester was the proper place for the trial; the costs to be reserved on account of the Defendants' delay in bringing their motion. *OLD MILL CO. v. DUCKINGFIELD (or DUKINFIELD) LOCAL BOARD* — 54 L. J. Ch. 160, 51 L. T. 414

3. — *Jury—Right to—O. XXXVI., rr. 4, 6, 7.]* Where a party wishes to have an action tried with a jury, he must obtain an order to that effect; and if the case comes within O. XXXVI., r. 6, the master has no discretion, but is bound to make the order. *TROWER v. LAW LIFE ASSURANCE SOCIETY* 54 L. J. Q. B. 407, 52 L. T. 888, [33 W. R. 647 (C.A.)]

4. — *Jury—Right to—O. XXXVI., rr. 4, 6, 7a.]* In actions which before the Judicature Act, 1873, could be (without any consent of parties) tried without juries, there is now no absolute right under O. XXXVI., r. 6, to have a jury on the demand of one of the parties, but the Court has a discretionary power to allow trial by jury in such cases under O. XXXVI., rr. 4 and 7a.

In an action *in rem* for necessities for a ship, the trial was directed to be before a judge at the assizes. The Plaintiff applied for an order that the action should be tried with a jury, alleging that he was entitled, under O. XXXVI., r. 6, to such an order as of right. Butt, J., refused the application:—

*Held*, that the action was not within O. XXXVI., r. 6, and that the application could only be made under r. 7 of that order, and, therefore, the judge would have a discretion to grant the application. *THE "TEMPLE BAR"* 11 P. D. 6, 34 W. R. 68, [W. N. (1885) 195 (C.A.)]

5. — *Mode of Trial—Rules of Supreme Court, 1883, O. XXXVI., r. 1.]* The Plaintiff in an action to set aside deeds on the ground of fraud, named Cardigan as the place of trial in his statement of claim. On motion by a Defendant before issued joined, the Court ordered the action to be tried in the Chancery Division without a jury, and this decision was affirmed by the Court of Appeal. *POWELL v. COBB* 29 Ch. D. 486, 54 L. [J. Ch. 475, 662; 52 L. T. 183, 53 L. T. 188 (C.A.)]

6. — *Non-appearance of Plaintiff—Dismissal of action—Restoration to Cause List—O. XXVII., r. 15—O. XXXVI., r. 33.]* The Plaintiff  
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**XXXVII. PRACTICE—TRIAL—continued.**

not appearing at the trial of an action, it was on the 30th of July, dismissed with costs.

On the 31st of October, a motion was made to discharge the previous order, and to restore the case to the paper to be heard on its merits:—

*Held*, by North, J., that the Court had no power to restore the action except where the application is made within six days of the dismissal. *WALTER (or WALKER) v. JAMES* 53 L. T. 597, 34 W. R. 29

7. — *Notice of Trial—Cause struck out—Re-entry—O. XVII., r. 10.* When a cause has been struck out of the cause-book under the above rule, before such cause can be re-entered in the cause-book a new notice of trial must be given. *LE BLOND v. CURTIS* 52 L. T. 574, 33 W. R. 561, [W. N. (1885) 99]

8. — *Notice of Trial, Right of Defendant to give—Abridgment of Time—O. XXXVI., r. 12; O. LXIV., r. 7.* O. XXXVI., r. 12, provides that, if the Plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the Defendant may, before notice of trial given by the Plaintiff, give notice of trial, or may apply to the Court or a Judge to dismiss the action for want of prosecution. O. LXIV., r. 7, provides that the Court or a Judge shall have power to enlarge or abridge the time appointed by the rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require:—*Held*, by Grove and Lopes, JJ., that the period of six weeks mentioned in O. XXXVI., r. 12, is not a time appointed for doing any act or taking any proceeding within O. LXIV., r. 7, and consequently that the Court could not make an order giving the Defendant leave to give notice of trial, if the Plaintiff did not give such notice within a shorter period than six weeks from the close of the pleadings. *SAUNDERS v. PAWLEY* [14 Q. B. D. 234, 54 L. J. Q. B. 199, [51 L. T. 903, 33 W. R. 277]

9. — *Venue—Chancery Action—O. XXIV., r. 3.* An action having been brought in the Chancery Division for specific performance of an agreement for the sale of land in Cornwall, involving a difficult question on the law of vendor's lien, the Plaintiff, in his statement of claim, fixed the venue at Exeter. The Defendant having moved to have it changed to Middlesex, and it appearing that the balance of convenience regarding the attendance of witnesses was in favour of the trial taking place in London, and that if it took place at Exeter the points of law in the action would probably be referred from the assizes to London, it was *held*, by Chitty, J., that the venue must be changed to Middlesex, and that the delay which must necessarily ensue was not of itself a sufficient reason for allowing the action to be tried at the assizes. *GREEN v. BENNETT* [54 L. J. Ch. 85, 50 L. T. 706, 32 W. R. 848]

10. — *Venue, Change of—Action assigned to Chancery Division—Rules of Supreme Court, 1883, O. XXXVI., r. 1.* Under O. XXXVI., r. 1, a Plaintiff is entitled to lay the venue of an action in any place that he pleases, although it is specially assigned to the Chancery Division, and

**XXXVII. PRACTICE—TRIAL—continued.**

has been commenced in that Division. *PHILIPS (or PHILLIP) v. BEALE (or BEALL)* 28 Ch. D. 621, [54 L. J. Ch. 80, 50 L. T. 433, 32 W. R. [665 (C.A.)]

— Evidence—Document—No Notice to produce.

*See PRACTICE—EVIDENCE.* 10.

— Trial at Bar—Appeal.

*See PRACTICE—APPEAL.* 5.

— Venue—Action against Constable.

*See CONTAGIOUS DISEASES ACT.* 1.

**XXXVIII. PRACTICE—WRIT—Appearance—Address for Service—“Illusory or Fictitious”—O. XII., rr. 11, 12.** Where a Defendant gives an address for service at which he is not to be found, and there is no person authorized to take in or forward documents, such address is illusory, and the appearance will be set aside on an *ex parte* application.

Service of the order setting aside the appearance may be effected by registered letter sent to the address for service. *EDELL v. CAVE (or E. v. C.)* - 54 L. J. Ch. 308, 51 L. T. 621, [33 W. R. 298, W. N. (1884) 241]

2. — *Service—Foreign Corporation—“Officer”—“Clerk”—O. IX., r. 8.* The Defendants were a company whose head offices were in France, but they also had agents and correspondents, among other places, in London. Service of a writ of summons on their agent in London was set aside, on the ground that he was not the “head-officer, clerk, treasurer, or secretary of such corporation” within the above rule. *NUTTER & Co. v. MESSAGERIES MARITIMES DE FRANCE* [54 L. J. Q. B. 597]

3. — *Service out of Jurisdiction—O. II., r. 4; O. XI., rr. 1 (g), 2, 4.* On an application to serve a person out of the jurisdiction under O. XI., r. 1 (g), it must be shewn that there is within the jurisdiction a Defendant against whom substantial relief is claimed, and also that the Defendant within the jurisdiction has been previously duly served.

*Semble*, where a person resident out of the jurisdiction has brought an action in this country, he has made himself amenable to the jurisdiction with respect to matters connected with his action. *YORKSHIRE TANNERY AND BOOT MANUFACTORY v. EGLINTON (or EGLINGTON) CHEMICAL Co.* [54 L. J. Ch. 81, 33 W. R. 162, W. N. (1884) 200]

4. — *Service out of Jurisdiction—Rules of Supreme Court, 1883, O. XI., r. 1, sub-s. (f).* The Court will exercise discretion in allowing or disallowing service out of the jurisdiction, and in so doing will consider evidence as to the merits. *SOCIÉTÉ GÉNÉRALE DE PARIS v. DREYFUS BROTHERS* [29 Ch. D. 239, 54 L. J. Ch. 893, 53 L. T. 463, [33 W. R. 833]

5. — *Service out of Jurisdiction—Action against Underwriters—Co-defendants served within Jurisdiction—O. XI., r. 1 (g).* The Plaintiff in an action brought in England on a marine insurance policy against several underwriters, served the writ of summons on two of the underwriters who were within the jurisdiction. He then applied for leave under the above rule to serve his writ on the other Defendants, who were

**XXXVIII. PRACTICE—WRIT—continued.**

residing out of the jurisdiction in Scotland, as being necessary parties to the action. *Held*, by Manisty and Lopes, JJ., that leave should be given. *STEAMSHIP "THANEMORE" LIMITED v. THOMPSON* - 52 L. T. 552, 5 Asp. M. C. 398

6. — *Service out of Jurisdiction—Action for Injunction to restrain winding-up Petition—Claim for other relief—O. XI., r. 1.* The Defendant, resident in Scotland, executed there a contract (which was in English form) with an English Mining Co., whereby he was to perform certain services for them in the Transvaal at a salary. He proceeded to the Transvaal, but returned before he had fully performed the services. He claimed a half-year's salary which he alleged was due to him. This the company declined to pay on the ground that the Defendant had broken his contract with them, whereupon he threatened to present a petition to wind-up the company.

The company brought this action claiming, (1) rescission of the contract; (2), return of certain sums paid by them in pursuance of it, after setting off such salary, if any, as might be due to the Defendant; and (3) an injunction to restrain him from presenting or advertising any petition to wind-up the company.

An order having been made for service of the writ on the Defendant in Scotland, he moved to discharge such order, contending that the case was not within the above rule, that the action was not for a breach "within the jurisdiction" of a contract made without the jurisdiction; and that the company could not, merely by inserting in their writ a claim for an injunction, bring the case within the rule. *Held*, by Kay, J., that O. XI., r. 1, applied to the case, that it was not necessary that an injunction should be the only relief sought in order to bring the case within the rule, and that the motion must therefore be refused. *LISBON-BERLYN (TRANVAAL) GOLD FIELDS v. HEDDLE* - 52 L. T. 796

7. — *Service out of Jurisdiction—Injunction—O. XI., r. 1 (f)—Objection out of Time—O. LXX., r. 2.* A writ of summons claiming an injunction to restrain the Defendant (resident in Dublin) from sending to the Plaintiffs, or either of them, in London, through the post-office or otherwise, libellous, defamatory, or obscene post-cards, &c., and also claiming damages, may by leave of the Court be issued and served upon a Defendant residing in Dublin, under O. XI., r. 1 (f), notwithstanding the obstacles to making the injunction available.—Objection after appearance, too late: *Order LXX., r. 2. TOZIER v. HAWKINS* [15 Q. B. D. 650, 680 (C.A.)]

8. — *Service out of Jurisdiction—Action for Rent of Land in England—Defendants domiciled or ordinarily resident in Scotland—Judicature Act, 1883, O. XI., r. 1 (b), (e).* O. XI., r. 1, does not enable the Court or a judge to allow service out of the jurisdiction of a writ in an action for non-payment of rent due under a lease of land in England against Defendants who are domiciled or ordinarily resident in Scotland. So *held*, by Coleridge, C.J., Mathew and Smith, JJ. The Court of Appeal affirmed the above decision, but on the ground that the Defendants (who were sued as assignees of the lease), had not executed

**XXXVIII. PRACTICE—WRIT—continued.**

the assignment thereof, and there was no evidence that they had accepted it.

*Quære*, whether a claim for rent is "an obligation or liability affecting land." *AGNEW v. USHER*. [14 Q. B. D. 78, 54 L. J. Q. B. 371, 51 L. T. 576, [752, 33 W. R. 128 (C.A.)]

9. — *Service out of Jurisdiction—Intended Substitution of Service.* A writ which is intended to be served by substituting service on a person residing within the jurisdiction may be issued without leave of the Court though the defendant be resident out of the jurisdiction. *LEWIS v. HEBBERT* 16 L. R. Ir. 340 (C.A.)

10. — *Service out of Jurisdiction—Affidavit of—Certificate in Lieu of—O. XIII., r. 2; O. XXXVIII., r. 6.* The Court will not accept a certificate in lieu of an affidavit of service of a writ of summons out of the jurisdiction although H.M. Foreign Office have given instructions to the British consuls resident in the country to which the Defendant belongs not to administer oaths to the subjects of that country. So *held*, by Pollock, B., Manisty and Smith, JJ. *FORD v. MIESCKE* - 16 Q. B. D. 57, 55 L. J. Q. B. 79, [53 L. T. 535, 34 W. R. 74]

11. — *Substituted Service—Defendant out of Jurisdiction—Substituted Service of same Writ within Jurisdiction—O. VI., rr. 1, 2.* Where a Defendant is abroad, and the writ has been issued for service out of the jurisdiction, the judge can, if the circumstances warrant substitution, order a copy of such writ to be served within the jurisdiction, although it is not in the form used for service within the jurisdiction. *FORD v. SHEPHERD (or SHEPPARD)* 53 L. T. 564, 34 W. R. 63

12. — *Substituted Service—Advertisement—Indorsement on Writ as to Service—O. IX., rr. 2, 15.* *DAVIES v. LOUND* - W. N. (1885) 54

— Action in rem—Service—Affidavit of. See PRACTICE—ADMIRALTY. 20.

— Amendment—Claim for recovery of land joined with other claims. See PRACTICE—PLEADINGS. 7.

— Appearance to protect property from seizure in case of judgment by default. See FOREIGN JUDGMENT.

— Inquisition—Alleged Lunatic. See LUNATIC. 4.

PRACTICE—Administration. See ADMINISTRATOR: EXECUTOR.

— Certiorari.

See CERTIORARI.

— County court.

See COUNTY COURT.

— Criminal law.

See CRIMINAL LAW.

— Dismissing action as frivolous and vexatious. See CHAMPERTY.

— Foreclosure action.

See MORTGAGE—FORECLOSURE.

— Habeas corpus—Party to motion.

See HABEAS CORPUS.

— Justice of the peace.

See JUSTICES. 3—7.

**PRACTICE—continued.**

- Lands Clauses Act.  
See LANDS CLAUSES ACT.
- National Debt Act.  
See NATIONAL DEBT COMMISSIONERS.
- Partition suit.  
See PARTITION.
- Patent.  
See PATENT. 4—9.
- Petition for appointment of trustees—Title—Policy of life assurance.  
See HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS. 7.
- Poor-rate.  
See POOR-RATE. 5, 6.
- Railways Regulation Act—Special case—Power to state.  
See RAILWAY COMPANY. 14.
- Reduction of capital of company.  
See COMPANY—REDUCTION OF CAPITAL.
- Settled Land Act, 1882, s. 21—Appearance by trustees.  
See SETTLED LAND ACTS. 4.
- Trade-marks—Registration of.  
See TRADE-MARK.
- Trustee Acts.  
See TRUSTEE ACTS.
- Winding-up.  
See COMPANY—VOLUNTARY WINDING-UP COMPANY—WINDING-UP.

**PRECATORY TRUST.**

See WILL—CONSTRUCTION. 34, 35.

**PREScription**—*Prescription Act (2 & 3 Wm. 4, c. 71), ss. 2, 4, 5, 6—Right to use Way for the Removal of Timber—User at long Intervals—“Enjoyment for full period of Twenty Years.”* In an action where a right of way was claimed under the Prescription Act (2 & 3 Wm. 4, c. 71), in respect of twenty years' user as of right, it appeared that the way had only been used by the party claiming it—the Defendant—for the removal of wood cut upon an adjoining close. The wood was cut upon this close at intervals of several years; the last cutting having been in the year before the action was commenced, the one next previous twelve years before, and the next at another interval of twelve years. Between these intervals the road was occasionally stopped up, but the defendant used it as often as he wished while the wood was being cut:—*Held*, that there had not been an uninterrupted enjoyment of the way for twenty years within the meaning of the Prescription Act, which did not apply to so discontinuous an easement as that claimed.—Judgment of the Queen's Bench Division (11 Q. B. D. 715; 53 L. J. Q. B. 30, 1883 Dig. col. 137) affirmed. *HOLLINS v. VERNEY* 13 Q. B. D. 304, [53 L. J. Q. B. 430, 51 L. T. 753, 33 W. R. 5, [48 J. P. 580 (C.A.)]

2. — *Right of Way—Prescription Act (2 & 3 Wm. 4, c. 71), s. 8—Forty Years' Enjoyment—Remainderman—“Reversion expectant” on Term of Life or Years.* Where a right of way is claimed by virtue of forty years' enjoyment under the Prescription Act, 2 & 3 Wm. 4, c. 71; the period during which the servient tenement has been vested

**PREScription—continued.**

in a tenant for life, with remainder in fee, cannot be deducted from the period of forty years' enjoyment—for the remainderman is not “a person entitled to the reversion expectant on a term” within s. 8. *SYMONS v. LEAKER* 15 Q. B. D. 629, [54 L. J. Q. B. 480, 53 L. T. 227, 33 W. R. 875, [49 J. P. 775]

- Cape of Good Hope—Roman-Dutch Law.  
See COLONIAL LAW. 7.
- Liability by, of frontager to repair sea-wall.  
See SEWERS.
- Scotch Law—Way.  
See SCOTCH LAW. 10.
- Tithes—City of London.  
See TITHE. 1, 2.

**PRESUMPTION.**

See EVIDENCE. 10, 11.

**PRETENDED TITLE—Buying of—Forfeiture.**

See VENDOR AND PURCHASER—TITLE. 6.

**PRINCIPAL AND AGENT**—*Agent's liability—Broker—Sale by Brokers for Undisclosed Principals—Provision in bought and sold Notes for Settlement of Disputes by Brokers—Custom of Trade making Brokers personally liable—Evidence of Admissibility.* A written contract made by brokers on behalf of undisclosed principals for the sale of hides provided that “if any difference or dispute shall arise under this contract it is hereby mutually agreed between the sellers and buyer that the same shall be settled by the selling brokers, whose decision in writing shall be final and binding on both sellers and buyers.” In an action against the brokers in respect of inferior hides delivered under the contract, the buyer made a claim for the breach against the brokers as principals by custom of the trade:—*Held*, by Stephen and Williams, J.J., that evidence of custom of the trade that a broker who does not disclose his principal is personally responsible for the performance of the contract and liable for the breach was rightly rejected, as such custom was inconsistent with the arbitration clause, which would, if the custom were incorporated, make the brokers judges in their own cause. *BARROW v. DYSTER* 13 Q. B. D. 635, 51 L. T. 573, 33 W. R. 199

2. — *Agent's liability—Broker signing as Principal—“Broker”—Sale of Goods—Jurisdiction of Arbitrator—“Dispute arising on this Contract.”* By a contract in writing, the Defendant “sold to” the Plaintiffs a cargo of cotton seed cake of a specified quality. The contract contained a clause that “should any of the above goods turn out not equal to quality specified, they are to be taken at an allowance, which allowance, together with any dispute arising on this contract is to be settled by arbitration.” The Defendants signed the contract with the addition of the words “brokers,” and were acting as agents. Some time after the contract was signed, the Defendant named their principals. The cargo proved to be of inferior quality, and an arbitration (which the Plaintiffs did not attend) to determine the liability of the Defendants was held: the arbitrator decided by their award that the Defendants were not liable, inasmuch that a custom existed that a broker upon naming his principals ceased to be

**PRINCIPAL AND AGENT—continued.**

liable on the contract. At the trial of the action, the jury found that the alleged custom did not exist:—*Held*, first, that the Defendants were personally liable on the contract; secondly, by Brett, M.R., and Bowen, L.J., Fry, L.J., dissenting, that the Defendants were not relieved from liability by the award, inasmuch as the arbitrators had exceeded their jurisdiction. *HUTCHESON v. EATON* - 13 Q. B. D. 861, 51 L. T. 846 (C.A.)

3. — *Agent's Liability—Loss through Fraud of Solicitor—Negligence.* Where a paid manager or agent of an estate appointed as such by an order of the Court transmits moneys belonging to the estate to his solicitor, for the purpose of paying them into Court, before an order for such payment in has been obtained, and makes no inquiry whether they have or have not been paid in, and such moneys are afterwards misappropriated by the solicitor or otherwise lost, the agent is liable for such misappropriation or loss. *Re MITCHELL. MITCHELL v. MITCHELL* - 54 L. J. Ch. 342, [52 L. T. 178, W. N. (1884) 242]

4. — *Agent's liability — Misrepresentation by insurance agent.* *KREGER v. PITCAIRN* [47 Amer. R. 718 (U.S.)]

5. — *Authority—Auctioneer — Contract for Sale of Land—Specific Performance.* Certain land having been offered for sale by auction was bought after the sale by D. The auctioneer had, before the sale, received a letter from S. inquiring as to the price that would be asked for sale by private contract in case the land was not sold by auction, and after the sale the auctioneer informed D. that a customer was inquiring after the land. D. said he was willing to sell it for £6600, provided his offer was accepted by a certain day. The offer was communicated by the auctioneer to S., who wrote a reply to the auctioneer accepting it, but the evidence was conflicting as to whether this acceptance was within the time stipulated. S. having brought an action against D. for specific performance of the agreement, D. contended that the auctioneer's authority did not extend to making a contract, but only to bringing the parties together:—

*Held*, by Field, J., that the auctioneer was authorised to make a binding contract for a sale of D.'s bargain. *Hamer v. Sharp* (L. R. 19 Eq. 108, 31 L. T. 643) distinguished.

But *held*, that, on the question of fact, the acceptance was not within the time limited by D., and that the action must be dismissed on that ground. *SAUNDERS v. DENCE (or DENSE)*

[52 L. T. 644, W. N. (1885) 73]

6. — *Authority—Agent to travel and sell steam engines—Implied authority to hire horses.* *HUNTLEY v. MATHIAS* - 47 Amer. R. 516 (U.S.)

7. — *Principal's Liability — Misrepresentation by Secretary of Company—Company's Liability.* The secretary of a company has no general authority to make representations to induce persons to take shares in a company; so that a person who is induced to take shares in a company by a fraudulent misrepresentation, not authorised by or known to the officers of the company entitled to make representations, of the secretary of the company is not entitled to maintain an action

**PRINCIPAL AND AGENT—continued.**

against the company for the rescission of the contract, or for damages for such misrepresentation. *NEWLANDS v. NATIONAL EMPLOYERS ACCIDENT ASSOCIATION* - 54 L. J. Q. B. 428, 53 L. T. 242, [49 J. P. 628 (C.A.)]

— *Agent for purchase—Sale of agent's own property to principal.*

*See COMPANY—DIRECTORS.* 3.

— *Agent of mortgagor—Payment by, of interest on mortgage debt—Limitation.*

*See LIMITATIONS, STATUTES OF.*

— *Authority—Sale of realty—Solicitor—Correspondence.*

*See VENDOR AND PURCHASER—CONTRACT.*

1.

— *Betting by agent—Action for money received.*

*See GAMING.* 2.

— *Factor—Advances by brokers to agents for sale.*

*See FACTOR.*

— *Fraudulent representation by agent—Principal's liability.*

*See SALE OF GOODS.* 4.

— *Master and servant—Assault by servant—Master's liability.*

*See MASTER AND SERVANT.* 8.

**PRINCIPAL AND SURETY—Discharge.]** A surety guaranteed payment of the premiums upon a life policy which had been assigned by the principal debtor to his creditor to secure payment of part of the debt. Subsequently, the creditor, without the knowledge of the surety, agreed with the debtor to take the security and the liability of the debtor and surety to pay the premiums thereon in substitution for the personal liability of the debtor, in respect of that portion of the debt, and released the debtor from personal liability in respect thereof. *Held*, that this arrangement discharged the surety. *LOWES v. MAUGHAN & FEARON* - - - 1 C. & E. 340

2. — *Discharge—Creditor's refusal to sue principal upon request.* *SMITH v. FREYLER*

[47 Amer. R. 358 (U.S.)]

3. — *Joint Guarantee—Death of Guarantor—Misrepresentation—Estoppel—Tenterden's Act* (9 Geo. 4, c. 14), s. 6.] Two directors and the solicitor of a company gave to a bank a joint guarantee of the banking account of the company. One of the guarantors died, but no notice was given to the bankers by the surviving guarantors that they considered the guarantee to be affected thereby, and the account was continued as before. *Held*, by Bacon, V.C., that the guarantee continued in force notwithstanding the death of the joint guarantor.

The company was reconstituted so that the guarantee no longer in terms applied, but the fact was concealed from the Plaintiffs (the bankers), who were led by the Defendants (the surviving guarantors) to suppose that the name only of the company had been changed, and that the guarantee continued, and the account was carried on as before with the addition of a word to the company's name.

*Held*, that the Defendants were estopped from

**PRINCIPAL AND SURETY**—*continued.*

denying that their liability on the guarantee continued. *ASHBY v. DAY* - 54 L. J. Ch. 935,  
[52 L. T. 723, 33 W. R. 631]

4. — Joint guarantee — Mortgage to co-surety—Subrogation—Rights of creditors of principal debtor. *HAMPTON v. PHIPPS* 108 U. S. 280 (U.S.)

— Bail in criminal case—Indemnity of surety.

See CONTRACT. 7.

— Discharge—Laches of creditor.

See BILL OF EXCHANGE. 1.

— Guarantee of dividends.

See COMPANY—DIVIDENDS.

— Verbal agreement of indemnity.

See FRAUDS, STATUTE OF. 1.

**PRINTER**—Election—Placard without printer's name—Corrupt practices.

See MUNICIPAL CORPORATION. 5.

**PRIORITY**—Building society—Winding-up.

See BUILDING SOCIETY.

— Directors' fees.

See COMPANY—DIRECTORS. 1.

— Judgments—Registration.

See JUDGMENT. 1.

— Mortgage.

See MORTGAGE—PRIORITY.

— Official receiver—Payments by.

See BANKRUPTCY—OFFICIAL RECEIVER. 1.

— Winding-up—Crown—Prerogative of.

See COMPANY—WINDING-UP. 13.

**PRISONER**—Habeas corpus—Party to motion.

See HABEAS CORPUS.

**PRIVILEGE**—Discovery.

See PRACTICE—DISCOVERY—DOCUMENTS. 6—8.

PRACTICE—DISCOVERY—INTERROGATORIES. 5, 6.

— Solicitor—Production of documents.

See SOLICITOR—PRIVILEGE.

**PRIVILEGED COMMUNICATION**—Solicitor and client—Criminal law.

See EVIDENCE. 12.

**PRIVY COUNCIL**—Practice—Leave to appeal in criminal cases.

See COLONIAL LAW. 3.

— Practice—Patent—Prolongation—Accounts.

See PATENT. 4.

**PROBATE**—Execution—Printed Form—Disposition partly on First and partly on Second Page—Attestation on First Page only—Exclusion of Second Page from Probate.] A will was written on a printed form by a testator's directions, and was contained partly on a first page and partly on a second. The attestation was at the bottom of the first page, and there was no attestation on the second page. *Held*, by Butt, J., that the second page must be excluded from probate.

*In the Goods of Birt* (L. R. 2 P. & D. 214, 40 L. J. P. 26, 19 W. R. 511) distinguished. *IN THE GOODS OF MALEN* - 54 L. J. P. 91, [33 W. R. 825]

2. — Execution — Witness — Attestation — Signing in "presence" of testator. *RIGGS v. RIGGS* [46 Amer. R. 464 (U.S.)]

**PROBATE**—*continued.*

3. — Grant — Executor according to the Tenor.] Where the Court can gather from the words of a will that a person named therein is required to pay the debts and generally to administer the estate, it will grant probate to such person, as executor according to the tenor. *IN THE GOODS OF BLUETT* - 15 L. R. Ir. 140

— Duty — Lunatic — Accumulations—Conversion.

See REVENUE. 8.

— Receiver appointed before—Jurisdiction.

See PRACTICE—RECEIVER. 4.

— Revocation—Forgery—Judgment in Chancery Division—Estoppel.

See ESTOPPEL. 1.

— Revocation—Jurisdiction of Chancery Division.

See PRACTICE—JURISDICTION. 2.

**PROBATE ACT**—Administration bond—Assignment—Creditor.

See ADMINISTRATOR. 3.

**PRODUCTION OF DOCUMENTS.**

See PRACTICE—DISCOVERY—DOCUMENTS.

**PROHIBITION**—*Inferior Court—Want of Jurisdiction.*] Where in an action in an inferior Court, upon the facts disclosed at the trial and relied on by the Plaintiff, a clear want of jurisdiction over the cause is for the first time made apparent, the Defendant has a right, at any time before execution has been completed, to claim a prohibition to restrain all further proceedings, and to prohibit any further excess of jurisdiction. Prohibition will not go to an inferior Court, if such Court had in fact jurisdiction over the cause, although the facts in evidence at the trial in the inferior Court were not such as to give that Court jurisdiction. *HEYWORTH v. MAYOR OF LONDON* 1 C. & E. 313

— County Court—New trial—Insufficient notice.

See COUNTY COURT. 4.

— Local Government Board — Provisional Order.

See PUBLIC HEALTH ACTS. 6.

— Mayor's Court—Jurisdiction.

See MAYOR'S COURT.

— Salford Court—Jurisdiction.

See SALFORD COURT.

**PROMISSORY NOTE.**

See BILL OF EXCHANGE.

**PROMOTER OF COMPANY.**

See COMPANY—PROMOTER.

**PROOF**—Bankruptcy.

See BANKRUPTCY—PROOF.

— Winding-up—Notice.

See COMPANY—WINDING-UP. 14.

**PROPERTY**—Building materials delivered but unused.

See BUILDING CONTRACT. 3.

— Letters—Injunction against publication.

See LETTERS.

— Title of newspaper—Interlocutory injunction.

See NEWSPAPER.

**PROSPECTUS**—Misrepresentation—Issue of debentures—Object of loan.  
See COMPANY—PROSPECTUS.

**PROTECTED TRANSACTION.**

See BANKRUPTCY—PROTECTED TRANSACTION.

**PROTECTOR OF THE SETTLEMENT**—Fines and Recoveries Act.

See TENANT IN TAIL. 1.

**PUBLIC HEALTH ACTS**—*Arbitration*—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 179, 180, 308—*Jurisdiction of Arbitrator when Liability under the Act is bona fide disputed.* When a claim for compensation is made against a local authority for damage caused by the exercise of the powers conferred upon them by the Public Health Act, 1875, the arbitrator has jurisdiction to hold the arbitration and make his award as to the fact of damage and the amount of compensation under sects. 179, 180, 308, although the local authority *bona fide* dispute their liability to make compensation at all under the Act. Their proper course is to raise the question of liability in their defence to an action upon the award.

Decision of the Court of Appeal (11 Q. B. D. 735, 52 L. J. Q. B. 529, 49 L. T. 486, 32 W. R. 141, 47 J. P. 628, 1883 Dig. col. 345) affirmed.

**BRIERLEY HILL LOCAL BOARD v. PEARSALL**

[9 App. Cas. 595, 54 L. J. Q. B. 25, 51 L. T. 577, [33 W. R. 56, 49 J. P. 84 (H. L., E.)]

2. — *Common Lodging House—Registration—Resolution of Local Board*—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 76, 89.] F. applied to be registered as the keeper of a common lodging house under sect. 76 of the above Act, having fulfilled the conditions imposed by sect. 78, and the local board passed a resolution that his house should be registered. The clerk did not carry out this resolution, and no formal registration of F. or his house was made. Eight months afterwards the local board resolved that F. should not be registered, and two months later prosecuted him for keeping a common lodging house without being registered. The justices refused to convict.—*Held*, by Mathew and Day, JJ., upon a case stated, that, for the purposes of the Act, the resolution of the board constituted registration, and that the justices were right in refusing to convict F. **COLES v. FIBBENS** 52 L. T. 358, 49 J. P. 308

3. — *Contract not under Seal*—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 174, 257—*Sewering and Paving—Liability for Proportion of Expenses.* In an action by a local authority to recover from the Defendant his proportion of the cost of sewerage, paving, &c., a street under the powers of the Public Health Act, 1875, s. 150, it appeared that part of the work, to an amount exceeding £50, had been done by contractors employed by the local authority, but that no written contract under the common seal of the authority had been made with them as provided by sect. 174:—*Held*, by Hawkins, J., and Smith, J., that the Defendant was nevertheless liable. By Smith, J., that the objection, if valid, would have been an objection to the apportionment, which could only be raised in the time and manner provided by sect. 257. **BOURNEMOUTH COMMISSIONERS v. WATTS** - 14 Q. B. D. 87, 54 L. J. Q. B. 93, 51 L. T. 823, 33 W. R. 280, 49 J. P. 102

**PUBLIC HEALTH ACTS—continued.**

4. — *Contract not under Seal—Affixing Seal where Contract partly performed, Effect of—Illegality—Officer concerned in Contract, whether Contract void*—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 174, 193.] By sect. 174 of the Public Health Act, 1875, every contract made by an urban authority whereof the value or amount exceeds £50 shall be in writing and sealed with the common seal of such authority.—The Defendants, an urban authority, by contract not under seal employed the Plaintiffs as engineers to perform certain work. The Plaintiffs performed part of the work exceeding in value £50, and then required the Defendants to affix their seal to the contract. This the Defendants did, believing that it was for the benefit of the ratepayers of the district that the contract should be completed:—*Held*, by Cave, J., that as part of the work was unperformed when the seal was affixed, and there was consideration for affixing it in the Plaintiffs' promise to complete the work, it was competent for the Defendants to constitute the contract a good contract under seal, within sect. 174, in respect of the work already done, and therefore that the Plaintiffs were entitled to maintain their action for the value of that work.—By sect. 193, officers or servants employed under this Act by the local authority shall not in anywise be concerned or interested in any bargain or contract made with such authority for any of the purposes of this Act; and if any such officer or servant is so concerned or interested he shall be incapable of afterwards holding or continuing in any office, or employment under this Act, and shall forfeit and pay the sum of £50, to be recovered by any person in the prescribed manner:—*Held*, that this section intended to limit the penal consequences of a breach of its provisions to the specified penalties; and therefore that the enactment did not render a contract made by an officer with the local authority void, so as to disentitle him to sue upon it. **MELLISS v. SHIRLEY AND FREEMANTLE LOCAL BOARD**

[14 Q. B. D. 911, 54 L. J. Q. B. 408, 52 L. T. 544 (Reversed by C.A., W. N. (1885) 224).

5. — *Drainage—Public Health Act, 1848* (11 & 12 Vict. c. 63), s. 48—*Local Board—Binding Successors—Trustees—Improvident Bargain—Ultra vires—Change of Circumstances.* Under the Public Health Act, 1848, s. 48, the owner of land adjoining a district by deed agreed with the local board to do certain works and pay £10 a year, and the board gave him leave to drain through their drain all sewage from the property and houses then belonging to the landowner and from any houses thereafter to be erected on the property. Many more houses were afterwards erected, and the urban sanitary authority (which had succeeded the local board) were under a new Act of Parliament prevented from passing as before the sewage through the drain into the Thames:—

*Held*, by North, J., that the deed was not *ultra vires*, and that the board could bind their successors as to the sewage of houses not then in existence.

*Held*, that though the board were trustees for the ratepayers they had exercised their discretion, and the agreement did not appear at the time improvident, and its turning out badly for them did not affect it.

**PUBLIC HEALTH ACTS—1912.**

in front of them was all open space (part of the same land) which had been used as a highway on a level with the highway. The defendants, in exercise of their powers under the Highways Act, and for the convenience of the public, had laid kerb-stones and a raised footpath on the edge of the highway, leaving openings in the kerb-stones so that the traffic could still pass at convenient points across the Plaintiff's land and premises. The learned Judge found, that the Plaintiff was entitled to a mandatory injunction directing the defendants to remove the kerb-stones and the footpath, and to any unreasonable conduct in respect of the injury caused by the kerb-stones and the footpath, compensation under section 148 of the Highways Act, 1930. MATLOCK BATH LO. 11 JAN 1931

*Reg. v. The Hastings Local Board* (6 B. & S. 401) followed and applied. *Ex parte*: KINGSTOWN COMMISSIONERS, *Re* LOCAL GOVERNMENT BOARD.

7. *Near Street.—By-laws as to Construction of Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 157.] *Held*, by Grove and Hawkins, J.J., that the above section did not empower the making of a bye-law that "no person shall commence the erection of a building in a new street unless and until the kerb of each footpath therein shall have been put in at such a level as may be fixed or approved of by the urban sanitary authority."

REIDAN v. MAYOR OF SUNDERLAND

8. *Notice*.—*Smoke*.—*Chimney*.—*Smoking*.—*North*.—*black*.—*smoke*.—*Chimney*.—*constructed*.—*to*.—*con-*  
*sume*.—*smoke*.—*Public*.—*Health*.—*Act*.—1875.—*Chs*.—*d*.—*39*.  
*Vol.*.—*c.*.—*XX*.—*p.*.—*91*.—*(75)*.—*N*.—An information having  
been laid against the proprietor of a brewery, for  
that black smoke was from time to time sent forth  
from the chimney of his brewery in such quantities  
as to be a nuisance, he was convicted, and  
fined.

Heard by Pollock, Re, and Day, J., that the plaintiff had a "crazy" suitcase, applied the latter part of the story, and not to the latter part, making it an outline, to send forth such studies as such a person as he is, a person, and that the Plaintiff was not entitled to such evidence as to the extent of the "crazy" suitcase. WEEKS v. N.Y. 262 U.S. 490, 23 S. 705

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[illegible]

10. — *Offensive Trade*.—*F. v. F.*—*39 Vict. c. 55, s. 112.* The respondents had been summoned before justices under a section for having, without a licence, carried on the business of fish-frying within a sanitary district; they found that the nuisance as carried on by the respondents was such that the effluvia arising therefrom was perceived 300 yards from the respondents' premises, but that fish-frying was a trade which was not within the section.—*Held*, for the respondents, J.J., that the justices were right in finding that the business was not a nuisance.

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**PUBLIC HEALTH ACTS—continued.**

*thority — Bye-law.*] It is reasonable for an urban sanitary authority to make a bye-law and regulations enabling it to retain the plans of intended buildings deposited under the Public Health Act, 1875, although such plans be disapproved of and rejected. *GOODING v. EALING LOCAL BOARD* - - - 1 C. & E. 359

14. — *Quorum—Casual Vacancy—Lapse of Board—Informality—Building Line—Acquiescence—Public Health Act (38 & 39 Vict. c. 55), ss. 155, 458; Sched. I., rr. 2, 9; Sched. II., Part I., r. 65; Part II., r. 2.*] Seven members of a local board constituted under the Public Health Act, 1875, and consisting of nine members, resigned, so that the quorum of three required by Sched. I., r. 2, was not left. The two remaining members proceeded to fill up the vacancies. The board as thus constituted prescribed a building line under sect. 155 of the Act:—

*Held*, by Pearson, J., that, as the resignations reduced the number of members to less than a quorum, the board had lapsed, that the two remaining members could not fill up the vacancies, that there was therefore no board, that the building line was therefore not well prescribed, and that Sched. I., r. 9, to the Act did not cure the defect.

*Held*, by the Court of Appeal, that the filling up of vacancies was “business” within the meaning of Sched. I., r. 2, that the two members were not competent to transact it, and that the two members therefore were not duly elected, but that by Sched. I., r. 9, the objection to the building line, founded on the fact that some of the members of the board were not duly elected, was removed.

The Defendants being about to pull down a school and erect a new one, submitted plans to the local board. The local board objected to the plans, giving as a reason that they violated a bye-law, which obliged a person laying out a new street to leave it of a certain width. This bye-law was not applicable, as South Lane, on which the school fronted, was not a new street. The Defendants disregarded the objection, commenced their works on the 5th of January, 1885, laid the foundations of the main wall towards South Lane on the 12th, and proceeded rapidly with the erection of it. On the 22nd of January the local board prescribed a building line which did not interfere with the main wall, but would prevent the erection of certain annexes not then commenced, lying between South Lane and the main wall, which annexes were shewn on the plans laid before the board. The Defendants had ground enough to allow of the annexes being erected elsewhere. The Defendants proceeded with the annexes, and the board brought their action to restrain them building beyond the line, and to compel them to pull down what they had built beyond it:—

*Held*, that where a building is taken down to be rebuilt, a building line may be prescribed under sect. 155, for any portion of it which has not been commenced, although other portions have been commenced, unless what has been commenced necessarily involves as a matter of construction a projection beyond the line afterwards prescribed, and that here no such necessity existed, as the annexes could be erected elsewhere. That the commencement of the main building therefore

**PUBLIC HEALTH ACTS—continued.**

did not preclude the board from laying down a line which would prevent the erection of the annexes which had not then been commenced.

*Held*, also, that as the notice given by the board, though ineffectual for the purpose of empowering them to pull down the erection under sect. 158, gave the Defendants to understand that the board objected on the ground that buildings according to the plan would make the street too narrow, the board had not done anything to induce the Defendants to believe that they would not prescribe a building line, and that there was no equity to prevent the board from exercising their powers under sect. 155 on the ground that they had misled the Defendants. *NEWHAVEN LOCAL BOARD v. NEWHAVEN SCHOOL BOARD* [30 Ch. D. 350, 53 L. T. 571, 34 W. R. 172 (C.A.)]

15. — *Sewer—Local Authority, vesting in—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 13—Obstruction by Owner of Soil—Injunction.*] A sewer made by the owner of some only of the houses in a street not yet a highway, though made for the purpose of draining his own amongst other houses, is not a sewer made by a person “for his own profit” within the meaning of the exception in sect. 13 of the Public Health Act, 1875.

The word “sewer” in that Act should receive the largest possible interpretation, and a drain is a “sewer” within the meaning of sect. 13, when more than one house has been connected with it. So *held*, by Kay, J. *ACTON LOCAL BOARD v. BATTEN* - - - 28 Ch. D. 283, 54 L. J. Ch. 251, [52 L. T. 17, 49 J. P. 357]

16. — *“Sewer”—Open Watercourse—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13, 18, 264.*] The sewage of certain houses drained into a sewer, and after passing through the sewer, was for a period of some years allowed to fall into an open watercourse, which, in its turn, flowed into a brook:—*Held*, by Denman, J., that, under the circumstances, the open watercourse was a “sewer” within the meaning of sect. 4 of the above Act. *WHEATCROFT v. MATLOCK LOCAL BOARD* [52 L. T. 356]

17. — *Streets—Apportionment of Expenses—Premises “fronting, adjoining, or abutting”—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.*] The appellant owned premises separated from a street by a wall five feet high, belonging, together with the land on which it stood, to another person. The appellant had no direct access from his premises to the street, but in order to reach it had to pass for a short distance down a public footpath, or over other intervening land:—*Held*, by Mathew and Smith, JJ., that the appellant was not the owner of premises “fronting, adjoining, or abutting” on the street within the meaning of sect. 150 of the Public Health Act, 1875, and therefore was not liable to contribute to the expenses of sewerage and paving the street under that section. *LIGHTBOUND v. BEBINGTON LOCAL BOARD* - - - 14 Q. B. D. 849, [54 L. J. M. C. 130, 33 W. R. 705, 49 J. P. 678] [Affirmed by C. A., W. N. (1885) 224.]

18. — *Unwholesome Meat—Condemnation by Justice—Proceedings for Penalty—Evidence of State of Meat—Public Health Act, 1875 (38 & 39*

**PUBLIC HEALTH ACTS—continued.**

*Vict. c. 55), s. 117.]* When unwholesome meat has been condemned by a justice, and proceedings are afterwards taken before a court of summary jurisdiction, under 38 & 39 *Vict. c. 55, s. 117*, against the owner of the meat, evidence may be given by him as to the state of the meat at the time of condemnation. *WAYE v. THOMPSON* 15 Q. B. D.

[342, 54 L. J. M. C. 140, 53 L. T. 358, 33 W. R. [733, 49 J. P. 693]

— Agreement to make a road—Requirements of local board.

*See SPECIFIC PERFORMANCE.* 1.

— General district rate—Special case.

*See JUSTICES.* 1.

— Highway rate—Urban authority—Local board.

*See HIGHWAY.* 6.

— Highway repairable by inhabitants at large.

*See HIGHWAY.* 2.

**PUBLIC HOUSE—Licence.**

*See INN.*

**PUBLIC PLACE—Indecent exposure.**

*See CRIMINAL LAW.* 11.

## Q.

**QUARE IMPEDIT**—Consolidated benefice—Right of presentation.

*See ADVOWSON.* 1.

**QUIA TIMET ACTION**—Fouling stream—Injunction.

*See NUISANCE.* 2.

**QUORUM**—Local board—Casual vacancy—Lapse of board.

*See PUBLIC HEALTH ACTS.* 14.

## R.

**RAILWAY COMPANY—Abandonment—Deposit—Abortive Undertaking—Application of Deposit—Promoters and Parliamentary Agents.]**

Under the usual provision, in an Act incorporating a railway company, that in the event of the undertaking being abortive the parliamentary deposit shall either be forfeited to the Crown, or in the discretion of the Court, be wholly or in part applied, as part of the assets of the company, for the benefit of the creditors thereof, the Court will not apply the deposit for the benefit of all the creditors without distinction as to the nature and merit of their claims; and accordingly the promoters and the parliamentary agents claiming in respect of costs incurred in obtaining the Act, or in relation to the promotion of the company, not being "meritorious creditors" (*Re Lowestoft, &c., Tramways Company* (6 Ch. D. 484)), will not be admitted to share in the distribution of the fund. *Re BIRMINGHAM AND LICHFIELD JUNCTION RAILWAY Co.* - 28 Ch. D. 652, 54 L. J. Ch. 580, [52 L. T. 729, 33 W. R. 517]

**RAILWAY COMPANY—continued.**

2. — *Abandonment—Deposit—Winding-up—Promoters—Interest—Ultravires—Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), s. 5.]* The promoters of a railway company raised the moneys requisite for the parliamentary deposit by obtaining an advance from a bank upon their personal security; and it was arranged by the promoters and the provisional committee of the company, as appeared by a minute, that the interest payable upon foot of the advance would be provided and paid by the company. The railway was afterwards abandoned, and an order to wind up the company having been made:—

*Held*, that a claim by the promoters for interest paid on foot of the advance should be disallowed. *Re ENNIS AND WEST CLARE RY. Co.*

[15 L. R. Ir. 180]

3. — *Liabilities—Negligence—Gate by side of Line—Horse killed by Train—Railway Clauses Act, 1845 (8 Vict. c. 20), ss. 68, 75.]* The fact of a railway company knowing that a gate, erected under sect. 68 of the above Act, is out of repair owing to a spring catch being ineffective, although the gate be also provided with a staple and hasp, and padlock and key, is some evidence for a jury that the company was guilty of negligence. So *held*, by Hawkins and Smith, J.J. *BROOKS v. LONDON AND NORTH-WESTERN RY. Co.*

[33 W. R. 167]

4. — *Liabilities—Negligence—Contributory—Passenger injured whilst shutting carriage door, no servant of company being at hand to do so. WESTERN MARYLAND RY. Co. v. STANLEY*

[48 Amer. R. 96 (U.S.)]

5. — *Liability—Obstructing Street—Private Act imposing penalty—Common Law right to damages.]* A railway company with powers of opening up the streets of a town for the construction of an underground railway, were bound by their Act of Parliament to restore the streets opened up by them within three months, under a penalty for £20 for every day exceeding that period for which the streets disturbed by them should not be restored:—*Held*, (1) that the statute in imposing this penalty did not by implication deprive persons injured, by the closing of a street beyond the legal period, of their common law right and damages, and (2) that a shopkeeper in a street obstructed by the operations, who averred that the company had by their operations closed the street in which his shop was situated for a period longer than three months, to his loss and damage, could maintain an action for damages. *CLYDE v. GLASGOW CITY AND DISTRICT RY. Co.*

[12 C. of S. Cas. 1315 (Sc.)]

6. — *Liability—Unpunctuality—Contract—Exemption from Liability—Damages.]* The Plaintiff took four 3rd class tickets at the Defendants' station at Durham by the 2.11 train for Belfast via Leeds and Barrow, which was printed on the tickets, with the further statement that they were "issued subject to regulations in time table." At the end of the time bills there were a number of pages entitled "connection with other railways," and one of such pages was printed, "Through communication between the N. E. line and Ireland, Belfast via Leeds and Barrow," from which it appeared that the 2.11 train should

**RAILWAY COMPANY—continued.**

arrive at Leeds at 4.45, and leave there at 5.10 by the Midland Co.'s line. The Midland Co.'s station at Leeds adjoins the N. E. Co.'s station, but is a separate building. The train by which the Plaintiff travelled did not reach Leeds till 5.22, and the Midland Co.'s train having left at the proper time, the Plaintiff was unable to proceed to Belfast that night, and was compelled to put up at an hotel at Leeds.—The conditions in the Defendant's time tables comprised the following:—"The hours stated in these time-tables are appointed as those at which it is intended, as far as circumstances will permit, the passenger trains should arrive at and depart from the several stations; but their departure or arrival at the times stated, or the arrival of any train passing over any portion of the company's lines in time for any nominally corresponding train on any other portion of their lines, is not guaranteed; nor will the company, under any circumstances, be held responsible for delay or detention, however occasioned, or any consequences arising therefrom. The issuing of tickets to passengers to places off this company's lines is an arrangement made for the greater convenience of the public; but the company will not be held responsible for the non-arrival of this company's own trains in time for any nominally corresponding train on the lines of other companies, nor for any delay, detention, or other loss or injury whatsoever which may arise therefrom, or off their lines." In an action brought in the County Court to recover the expenses to which the Plaintiff had been put by an alleged breach of contract by the Defendants, the County Court judge gave judgment for the Plaintiff for the amount claimed.

*Held*, by Huddleston, B., and Wills, J., that the judgment given in the County Court must be reversed, inasmuch as the conditions formed part of the contract, and the true construction of such conditions was that the Defendants refused to guarantee the punctuality of their trains according to the times mentioned in the tables, from whatever cause the irregularity or want of punctuality might arise. *McCARTAN v. NORTH EASTERN RY. CO.* - - - 54 L. J. Q. B. 441

7. — *Liabilities—Unpunctuality of Train—Conditions—Ticket and Time Tables—Through Train—Wilful Misconduct.* A condition that a railway company will not be liable for loss or inconvenience for delay unless due to wilful misconduct of their servants is not unreasonable.

When a passenger's ticket is expressed to be issued subject to the conditions in the time tables, they become part of the contract between the passenger and the company.

When a through train arrives at a junction too late to enable a passenger to catch the train running in connection, it is not wilful misconduct of the company's servants to refuse to send the passenger on by a special train, if, having regard to the condition of the line and the safety of other passengers, they consider it their duty to refuse.

The fact that a company has paid the demand of another passenger for inconvenience from delay cannot be used against them as an admission of liability.

*Semble*, if a company, knowing that their line is blocked, issued a ticket to a passenger for a through

**RAILWAY COMPANY—continued.**

train, he might hold them liable for misrepresentation: and personal inconvenience without pecuniary loss might be a ground for damages if the company's liability was established. *WOODGATE v. GREAT WESTERN RY. CO.* 51 L. T. 826, 33 W. [R 428, 48 J. P. 196]

8. — *Passenger's Luggage—Delivery to Passenger—Termination of Company's Risk.* The Plaintiff arrived at a station on the Defendants' railway with her luggage contained in two boxes which were taken from the luggage-van by a porter in the employ of the company. The porter asked the Plaintiff if he should engage a cab for her. In reply she said she would walk to her destination, and would leave her luggage at the station for a short time, and send for it. The porter said: "All right; I'll put them on one side and take care of them;" whereupon the Plaintiff quitted the station, leaving her boxes in the custody of the porter. One of them was lost:—*Held*, by Coleridge, C.J., and Cave, J., that the transaction amounted to a delivery of the luggage by the company to the Plaintiff, and a re-delivery of it by her to the porter as her agent to take care of, and that consequently the company were not responsible for the loss.—*Patscheider v. Great Western Ry. Co.* (3 Ex. D. 153) distinguished. *HODKINSON v. LONDON AND NORTH WESTERN RAILWAY COMPANY* 14 Q. B. D. 228, 33 W. R. 662

9. — *Passenger's Luggage—Authority of Porter to take charge of—Carrier's Act (11 Geo. 4, & 1 Will. 4, c. 68)—Railway and Canal Traffic Act (17 & 18 Vict. c. 31).* A lady gave three articles of luggage belonging to her husband to a porter of the Defendant company to take from a cab to the railway platform. She told him to label two of them, and asked if it would be safe to leave the third with him, as she wished it put into the train, which was not yet alongside the platform. He said "yes": she went to get her ticket from her husband, and on her return, found the third article gone:—

*Held*, by Day, J. (Smith, J., *dissentiente*, but withdrawing his judgment), that the liability of the company ceased when the porter placed the third article on the platform, and that in the lady's absence it remained in his charge, and not in that of the company. *BUNCH v. GREAT WESTERN RY. CO.* - - - 34 W. R. 74

10. — *Power to underpin Buildings on adjoining Lands—Retaining Wall of Railway—Wall built with double object.* A railway company had power to underpin or strengthen buildings on lands adjoining their line. They carried their line in a deep cutting close beside a building belonging to the Plaintiffs, and having given the required notice that they intended to underpin this building, they made a wall of concrete to support the Plaintiffs' building, part of the thickness of which was under the Plaintiffs' building, and part on the company's land, the whole wall forming the retaining wall of the railway cutting:—

*Held* (reversing the decision of Chitty, J.), that the fact that the concrete wall was also the retaining wall of the railway did not make it the less an "underpinning" within the meaning of the Act; and therefore that the company had not acted beyond their powers in making the wall on

**RAILWAY COMPANY—continued.**

the Plaintiffs' land. *STEVENS v. METROPOLITAN RY.* 29 Ch. D. 60, 54 L. J. Ch. 737, 52 L. T. 832, [33 W. R. 531 (C.A.)]

11. — *Railway Clauses Act—Compensation—Land injuriously affected—Obstructing access to Street*—8 Vict. c. 20.] The vendor of building land sold to C. a piece of land at the intersection of streets A and B, laid out on the level, and the soil of which streets remained in the vendor, and some houses were then built by C. on street A. Afterwards the F. Railway Co. compulsorily altered the level of the streets A and B, and thereby cut off the access from houses in street A to street B. *Held*, the cutting off of access to the houses was injuriously affecting C.'s houses in street A, and compensation was recoverable by C. under the above Act. *FURNESS RY. CO. v. CUMBERLAND CO-OPERATIVE SOCIETY* 49 J. P. 292 (H. L., E.)

12. — *Railway Clauses Act—Landowner—Branch Railway—Siding—Right of User—Renewing Junction—Board of Trade Order—Signalling Apparatus—Liability of Landowner—Injunction—Regulation of Railways*—3 & 4 Vict. c. 97, s. 5—5 & 6 Vict. c. 55, ss. 4, 6, 12—*Railways Clauses Act*, 1845, s. 76.] The Plaintiff, and his predecessors in title, as owners of land adjoining a single line of railway, had ever since the year 1861 used a junction siding connecting the railway with a foundry on their land, the siding being the only access to the foundry. The Defendants, the railway company, having doubled their line, the Board of Trade, acting on the report of their inspector and as a condition for certifying the line to be fit for traffic, required the company either to provide the junction of the siding with the modern and improved system of interlocking and signalling apparatus, or to remove the junction, which was of an old-fashioned description. The company then called upon the Plaintiff to execute the work or pay the costs of it, but this the Plaintiff declined to do, whereupon the company took up the junction points:—

*Held*, by Bacon, V.C. (54 L. J. Ch. 29, 51 L. T. 536, 33 W. R. 95), that the Plaintiff had, under sect. 76 of the Railways Clauses Consolidation Act, 1845, a statutory right to the use of his siding in connection with the company's railway, the company's Parliamentary powers being subject to that right; and an injunction was therefore granted restraining the company from continuing to prevent communication between his siding and the railway, and compelling the company to restore the junction.

*Powell Duffryn Steam Coal Company v. Taff Vale Railway Company* (L. R. 9 Ch. 331) distinguished.

*Held*, on appeal, that as the Plaintiff's predecessors in title had acquired a perpetual right to use the siding under a clause as to sidings in an old local Act for making a tramway, which had since been converted into the railway of the Defendants, and the subsequent Acts contained saving clauses sufficient to protect all rights acquired by the Plaintiff under the old Act, the case did not depend on the Railways Clauses Act, and that the Plaintiff retained the right acquired under the old Act to use the siding without contributing to the expense of the new apparatus,

**RAILWAY COMPANY—continued.**

such Act containing nothing to oblige the Plaintiff to make or pay for the interlocking apparatus.

*Held*, also, that if the case had turned on the 76th section of the Railways Clauses Act, the Court would not have decided the question whether the Plaintiff was bound to pay for the interlocking apparatus, without first ascertaining what, in the year 1845, was included in the terms "offset plates" and "switches" used in that section. *WOODRUFF v. BRECON AND MERTHYR TYDFIL JUNCTION RAILWAY COMPANY* 28 Ch. D. [190, 54 L. J. Ch. 620, 52 L. T. 69, 33 W. R. 125] (C.A.)

13. — *Railway Clauses Act—Minerals under or near Railway—Mineral Estate intersected by Railway—Right of Owner to work Mines—Railways Clauses Act*, 1845 (8 & 9 Vict. c. 29), ss. 77–82.] Sect. 80 of the Railways Clauses Consolidation Act, 1845, applies to minerals lying more than forty yards from a line of railway, and enables the owner of minerals, whose access to them is cut off, by reason of a railway company having purchased from him the minerals lying under their line of railway, or within forty yards from it, to tunnel under the railway for the purpose of working his minerals which are on the other side of it. And this power extends, not only to minerals in the ordinary sense of the word, but also to such a substance as clay, which is usually worked from the surface.

And by sect. 81 the mineral owner is entitled to be compensated by the company for any additional expense caused by his having to work the minerals in this way.

The Defendant was the owner of the minerals lying in and under a triangular piece of land, which was completely surrounded by three lines of railway belonging to the Plaintiffs, and also of the minerals lying under certain portions of those three lines. The company had purchased the surface of the triangular piece of land, and also the surface of the land on which those parts of the three lines were constructed. The minerals in and under the lands so purchased were not in the first instance purchased by the company. The Defendant, in April, 1885, gave the company notice, under sect. 78 of the Railways Consolidation Act, 1845, of his intention to work the minerals belonging to him in and under the triangular piece of land, and also under the lines of railway. The company gave the Defendant notice that they were willing to make compensation for the minerals under the lines of railway, and arbitrators were appointed to assess the compensation. The Defendant then gave the company notice that he intended to work the minerals in and under the triangular piece of land, and for that purpose to enter upon and across the line of railway:—

*Held*, by Pearson, J., that such a mode of working would be a trespass, and that the Defendant must be restrained from working in that way, but that he would be entitled to tunnel under the railway in order to work the minerals in and under the triangular piece of land, and that the company must compensate him for the extra expense of so working. *MIDLAND RY. CO. v. MILES* [30 Ch. D. 634, 53 L. T. 381, 34 W. R. 136]

**RAILWAY COMPANY—continued.**

**14. — Railways Regulation Act—Railway Commissioners—Special Case—Power to state—36 & 37 Vict. c. 48, ss. 15, 26—Terminal Charges—Stations, Sidings, &c.—Services incidental to the Business of a Carrier—26 & 27 Vict. c. cccviii., s. 51.]** On the hearing of an application made under the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 15, the Railway Commissioners have power to state a special case for the opinion of the High Court.—By the London, Brighton, and South Coast Railway Act, 1863 (26 & 27 Vict. c. cccviii.), s. 51: "The maximum rates of charges to be made by the company for the conveyance of animals and goods, including the tolls for the use of their railways and waggons or trucks and for locomotive power, and every other expense incidental to such conveyance (except a reasonable sum for loading, covering, and unloading the goods at any terminal station of such goods, and for delivery and collection, and any other services incidental to the duty or business of a carrier, where such services or any of them are or is performed by the company), shall not exceed" certain sums prescribed:—*Held*, by Coleridge, C.J., Mathew, Manisty, and Wills, J.J., that station accommodation, the use of sidings, weighing, checking, clerkage, watching, and labelling, provided and performed by the company in respect of goods traffic carried by them as carriers, may be, and *prima facie* are, "services incidental to the duty or business of a carrier" within sect. 51; whether they are so in any particular case is a question of fact for the Railway Commissioners to decide, and, if found by them to be so, such services may be the subject of a separate reasonable charge in addition to the rates prescribed. **HALL & Co. v. LONDON, BRIGHTON, AND SOUTH COAST RY. CO. - 15 Q. B. D. 505, [53 L. T. 345]**

**15. — Traffic Management—Liability—Misdelivery—Burden of Proof.]** The Plaintiffs consigned goods to the Defendant Railway Co. to be carried at the owner's risk rate, the contract providing that the company were not to be liable for loss, damage, or delay, except upon proof that such loss, &c., arose from wilful misconduct on the part of the company's servants. The goods were misdelivered to another firm, and on being found were tendered to the consignees, who refused to accept them. *Held*, by Mathew and Smith, J.J., that, in the absence of evidence on the part of the Plaintiffs as to the cause of the misdelivery, such misdelivery did not amount to wilful misconduct so as to render the Defendants liable.

**Hoare v. Great Western Ry. Co. (37 L. T. 186)** distinguished. **STEVENS v. GREAT WESTERN RY. CO. - 52 L. T. 324, 49 J. P. 310**

**16. — Traffic Management—Undue Preference—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 90—"Passing only over the same Portion of the Line"—"Under the like circumstances"—"In favour of or against any particular Person"—Unequal Tolls—Group Rates—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), ss. 2, 3, 6—Action for Breach of Railway and Canal Traffic Act, 1854, whether maintainable.]** No action will lie in respect of any

**RAILWAY COMPANY—continued.**

breach of the provisions of the Railway and Canal Traffic Act, 1854, s. 3.—Judgment of the Queen's Bench Division (13 Q. B. D. 674, 53 L. J. Q. B. 579, 51 L. T. 698, 1884 Dig. col. 414) as to this point affirmed.—A railway company carried coals eastwards to various towns from a group of collieries situate at different points along their line, and charged one uniform set of rates in respect of the carriage to all the collieries comprised in the group. In an action for overcharges by the owners of the colliery lying furthest eastwards:—*Held*, that inasmuch as the terminus of the transit over the company's line differed with respect to each colliery comprised in the group, the company had not contravened the provisions of the Railways Clauses Consolidation Act, 1845, s. 90, and therefore were not liable in the action.—Judgment of the Queen's Bench Division as to this point reversed.—A railway company carried coals from certain collieries, including the D. colliery, situate in the Y. coalfield, to the port of G., where a line of steamers called which traded to the West Indies; in order to introduce the coal carried by them to the West Indian market, the railway company agreed to allow B. 8d. per ton in respect of all coal shipped on board the steamers in order to be carried to the West Indies. The railway company agreed also to allow B. 6d. per ton upon all coal shipped for certain ports, in view of the anticipated advantage to themselves by the increased tonnage to be carried over their line. The owners of the D. colliery also sent coals over the line of the railway company to the same port of G., but not for shipment to the West Indies or to the ports above mentioned, and claimed to recover from the railway company overcharges in respect of the coal thus sent by them, on the ground of the allowance of 8d. per ton and 6d. per ton made to B.:—*Held*, as to the coals carried by the railway company for B. from the Y. coalfield other than those coming from the D. colliery, that the termini of the transit from the collieries being different, the owners of the D. colliery could not recover for overcharges:—*Held*, as to the coals carried by the railway company for B. coming from the D. colliery, on the authority of *Great Western Ry. Co. v. Sutton* (L. R. 4 H. L. 226), and *London and North Western Ry. Co. v. Evershed* (3 App. Cas. 1029), that the railway company, by making the allowances of 8d. per ton and 6d. per ton, had contravened the Railways Clauses Consolidation Act, 1845, s. 90, but that the owners of the D. colliery had not proved any damage by reason of the allowances to B., and therefore could not recover from the railway company for overcharges.—A railway company were carriers of coal for B. and J., who were coal merchants, to G. The trucks with the coals intended for them upon the arrival at G. were taken direct to their yards, and it cost the railway company less to deliver the trucks straight into the yards of B. and J., than to keep the trucks in the goods-yard of the company until the trucks should be unloaded. The railway company thereupon allowed B. sometimes 2d. and sometimes 6d. per ton, and J. 4d. per ton. B. and J. obtained coals from many collieries situate upon the line of the railway company, and the railway company, as might be convenient to them, returned the trucks

**RAILWAY COMPANY—continued.**

of B. and J. to any colliery with which they had dealings. It was cheaper for the railway company to be at liberty to send the trucks at their pleasure to any colliery with which B. and J. had dealings than to be compelled to return them to a particular colliery, and therefore they allowed B. and J. a rebate of 2 per cent. upon their respective nett debits. The saving to the railway company did not adequately represent the allowances of 6d. or 4d. per ton, or the rebate of 2 per cent. The owners of a colliery also sent their coals along the line of the railway company to G., but their trucks were kept in the goods-yards of the railway company until they were unloaded, and after being unloaded were returned straight to the colliery. The owners of the colliery having claimed to recover from the railway company for overcharges in respect of the allowance of 6d., 2d., and 4d. per ton, and of the rebate of 2 per cent. :—*Held*, that the railway company carried for B. and J. under circumstances different from those under which they carried for the owners of the colliery, and that the latter were not entitled to recover in respect of the alleged overcharges. **MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RY. CO. v. DENABY MAIN COLLIERY CO.** 14 Q. B. D. 209, 54 L. J. [Q. B. 103, 52 L. T. 598, 33 W. R. 491, 49 J. P. 181, 4 Ry. Cas. 467 (C.A.)]

(Partly Reversed by H. L., W. N. (1885) 222.)

17. — *Traffic Management—Undue Preference—Action for Repetition of alleged Overcharges—Railway Commissioners—Railway and Canal Traffic Act, 1854* (17 & 18 Vict. c. 31), ss. 3, 6—*Regulation of Railways Act, 1873* (36 & 37 Vict. c. 48), ss. 1, 6.] A trader complained that a railway company had for many years charged higher rates for the carriage of his goods than for those of a neighbour, the distance being eight miles in the former case, and in the latter twelve, starting from the same point. In an action for repetition of the alleged overcharges, brought some years after he had retired from business :—*Held*, that the only remedy ever open in the circumstances alleged was by application to the Railway Commissioners, in terms of the 3rd section of the Railway and Canal Traffic Act, 1854, and of the Regulation of Railways Act, 1873, for interdict (or injunction), at the time when the charges complained of were being enforced, and that the action as brought was maintainable neither (1) at common law, nor (2) under the Railways Clauses Consolidation (Scotland) Act, 1845, nor (3) under the Railway and Canal Traffic Act, 1854. *Evershed v. L. & N. W. Ry. Co.* (3 App. Cas. 1029, 48 L. J. Q. B. 22, 39 L. T. 306, 26 W. R. 863) observed upon. **MURRAY v. GLASGOW AND S. W. RY. CO.** 4 Ry. Cas. 456, 11 C. of S. Cas. 205 (Sc.)

18. — *Traffic Management—Undue Preference—Unequal Rates—Agreement.*] A railway company agreed with a number of coal masters to carry their coals at a certain rate per ton per mile. They further agreed that if the company should charge any other trader "lower rates" for conveyance to the same terminus than those stipulated in their agreement, the coal masters should be entitled to a corresponding reduction. — *Held*, that "lower rates" meant "lower rates per ton per mile," and that as the company had

**RAILWAY COMPANY—continued.**

charged another trader a lower rate per ton mile for carriage, the coal masters were entitled to a corresponding reduction, although, from the number of miles over which the other trader's goods were carried, the lump sum per ton paid him was higher. **MACKINNON v. GLASGOW S. W. RY. CO.** — 12 C. of S. Cas. 1309 (Sc.)

See also **CARRIER.**

— Compulsory purchase by.

See **LANDS CLAUSES ACT.**

— Liability—Negligence.

See **NEGLIGENCE.**

— Poor-rate—Occupation.

See **POOR-RATE.** 4.

— Powers—Nuisance—Cattle station.

See **NUISANCE.** 3.

— Scotch law.

See **SCOTCH LAW.** 5, 6.

**RAPE**—Consent obtained by fraud.

See **CRIMINAL LAW.** 21.

**RATE**—General district—Special case.

See **JUSTICES.** 1.

— Highway.

See **HIGHWAY.** 6, 7.

— Liquidator's liability for.

See **COMPANY—LIQUIDATOR.**

— Order of board of overseers to levy—Sealing.

See **METROPOLIS.** 6.

— Poor-rate.

See **POOR-RATE.**

— Railway—Carriage—Undue preference.

See **RAILWAY COMPANY.** 16—18.

— Water—Assessment.

See **WATER-RATE.**

**REALTY**—Sale of.

See **VENDOR AND PURCHASER.**

**RECEIPT**—Indorsed on mortgage to building society.

See **BUILDING SOCIETY.** 7, 8.

— Stamp—Receipt or agreement.

See **REVENUE.** 12.

**RECEIVER.**

See **PRACTICE—RECEIVER.**

— Official receiver in bankruptcy.

See **BANKRUPTCY—OFFICIAL RECEIVER.**

**RECEIVING ORDER.**

See **BANKRUPTCY—RECEIVING ORDER.**

**RECITAL**—Power of attorney—Control of operative part.

See **POWER OF ATTORNEY.**

**REDEMPTION.**

See **MORTGAGE—REDEMPTION.**

**REDUCTION OF CAPITAL.**

See **COMPANY—REDUCTION OF CAPITAL.**

**RE-ENTRY.**

See **LANDLORD AND TENANT—RE-ENTRY.**

**REFEREE.**

See **ARBITRATION : PRACTICE—REFEREE.**

**REFERENCE**—To arbitration.

See **ARBITRATION.**

**REFRESHER**—Discretion of Taxing Master.

See **PRACTICE—COSTS.** 3, 4, 24.

**REGISTRAR**—Bankruptcy—Jurisdiction.  
 See **BANKRUPTCY**—JURISDICTION. 2.  
 — District—Affidavit—Cross-examination.  
 See **PRACTICE**—EVIDENCE. 5.  
 — District—Transfer of actions—Liquidating company.  
 See **PRACTICE**—TRANSFER. 2.  
**REGISTRATION**—Bill of sale.  
 See **BILL OF SALE**—REGISTRATION.  
 — Common lodging house—Resolution of local board.  
 See **PUBLIC HEALTH ACTS**. 2.  
 — Company.  
 See **COMPANY**—UNREGISTERED COMPANY.  
 — Judgment—Priorities.  
 See **JUDGMENT**. 1.  
 — *Lis pendens*—Vacating registration—Application by person not a party.  
 See **LIS PENDENS**.  
 — Trade-mark.  
 See **TRADE-MARK**.  
**REGISTRY ACTS**—*Mortgage to secure future Advances—Registration of subsequent Mortgage—Lis pendens—Disposition—Priority.* A registered deed of mortgage, to secure moneys due and other advances, is, as regards a puisne mortgage, a valid security for such further advances if made *bonâ fide* and without notice of the subsequent mortgage, though after its registration. Such further advances are not "dispositions" within the meaning of the 4th section of the Irish Registration Act (6 Anne, c. 2).  
 Registration of a petition for sale by the second mortgagee as a *lis pendens* has not the effect of notice to the first mortgagee, so as to affect the priority of further advances made by him in ignorance of such petition and registration. *Re BYRNE'S ESTATE* - 15 L. R. Ir. 373 (C.A.)  
 — Middlesex—Sale of realty in—Share in proceeds—Charge on—Priority.  
 See **MORTGAGE**—PRIORITY. 11.  
**REGULATIONS FOR PREVENTING COLLISIONS AT SEA.**  
 See **SHIP**—COLLISION. 9—16.  
**RELEASE**—Debt due to testator.  
 See **WILL**—CONSTRUCTION. 1.  
**RELIEF**—Receipt of—Parliamentary franchise.  
 See **PARLIAMENT**. 3, 4.  
**RENEWABLE LEASE.**  
 See **LANDLORD AND TENANT**—LEASE. 8—10.  
**RENT.**  
 See **LANDLORD AND TENANT**—RENT.  
 — Distress for non-payment of.  
 See **LANDLORD AND TENANT**—DISTRESS.  
 — Order by landlord to pay, to third party.  
 See **ASSIGNMENT OF DEBT**. 2.  
**RENT-CHARGE**—Recovery of—Apportionment.  
 See **ACTION**. 2.  
 — Tithe rent-charge—Arrears not recoverable by sale.  
 See **TITHE**. 3.  
**REPAIR**—Covenant to—Breach—Notice.  
 See **LANDLORD AND TENANT**—LIABILITIES. 2.

**REPAIR**—continued.  
 — Highway.  
 See **HIGHWAY**. 8—12.  
 — Liability of tenant in common—Contribution.  
 See **TENANT IN COMMON**.  
 — Sea-wall—Extraordinary tide—Commissioners of Sewers.  
 See **SEWERS**.  
**REPORT**—Judge's—Irish action—Evidence.  
 See **EVIDENCE**. 13.  
**REPUGNANT GIFT.**  
 See **WILL**—ABSOLUTE GIFT. 1.  
 Will—CONDITION. 2, 4.  
**REPUTED OWNERSHIP.**  
 See **BANKRUPTCY**—ORDER AND DISPOSITION.  
**RES JUDICATA.**  
 See **ESTOPPEL**.  
 — Decision of Divisional Court—Second application.  
 See **MANDAMUS**. 2.  
 — Petition for re-transfer of stock—Dismissal of former petition.  
 See **NATIONAL DEBT COMMISSIONERS**. 1.  
 — Separate actions in respect of same wrongful act.  
 See **JUDGMENT**. 2, 3.  
**RESCISSION**—Contract for sale of realty.  
 See **VENDOR AND PURCHASER**—RESCISSION.  
**RESIDUARY GIFT.**  
 See **WILL**—RESIDUE.  
**RESTITUTION OF CONJUGAL RIGHTS**—Practice.  
 See **PRACTICE**—DIVORCE. 2, 9.  
**RESTRAINT OF MARRIAGE.**  
 See **WILL**—CONDITION. 3.  
**RESTRAINT OF TRADE**—*Agreement unlimited in respect of Time—Breach of Contract—Injunction.* *WEBB v. CLARK* - W. N. (1884) 216  
 2. — Covenant—Grant of exclusive right of way and privilege of laying and maintaining tubing for transporting oil through a tract of two thousand acres. *WEST VIRGINIA TRANSPORTATION CO. v. OHIO RIVER PIPE LINE CO.* [46 Amer. R. 527 (U.S.)]  
 3. — Covenant not to use name on certain preparations for medicinal purposes. *BREWER v. LAMAR* - 47 Amer. R. 766 (U.S.)  
**RETAINER**—Executor's.  
 See **EXECUTOR**—ADMINISTRATION. 7—10.  
 — Solicitor—Joint retainer.  
 See **SOLICITOR**—RETAINER.  
**REVENUE**—*Income Tax—Coal Mines—Dead Rent—Royalties—Deductions from Gross Profits—Provision for recouping Dead Rents out of Royalties, Effect of—*5 & 6 Vict. c. 35, s. 60 (Sched. A), r. 3; Sect. 100 (Sched. D)—29 & 30 Vict. c. 36, s. 8.] By an agreement for lease of coal mines for a term of years from March, 1874, the lessees agreed to pay a dead rent for the mines, and royalties at specified rates per ton on all coal worked; the dead rent to be recoupable out of royalties during the first sixteen years of the term—the effect being, that the lessor received on ac-

**REVENUE—continued.**

count of his share of the profits of the concern not less than a fixed annual sum; so that when his share of the royalties did not amount to the fixed sum he received that sum; but when his share of the royalties exceeded the fixed sum he received that sum only until the lessees had been reimbursed the excess paid to the lessor when his share of the royalties did not amount to the fixed sum. The lessees worked the mines for the first time in October, 1880, having paid the dead rent, less income tax, to the lessor up to that year. Upon an assessment to the income tax, made upon the lessees under Schedule D, for the year 1881-2, it appeared that the lessor's share of the royalties for that year had exceeded the dead rent by the sum of £1477:—*Held*, by Grove and Smith, JJ., that, in estimating the profits of the concern for the particular year for the purpose of being assessed under the Income Tax Acts, the lessees were not entitled to deduct the £1477 from their gross profits. *BROUGHTON AND PLAS POWER COAL CO. v. KIRKPATRICK* - - - 14 Q. B. D. 491, [54 L. J. Q. B. 268, 33 W. R. 278, 49 J. P. 119]

2. — *Income Tax—Deductions—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 52.* The above section provides that, in assessing the tax on any minister, it shall be lawful to deduct from his profits any sums of money paid or expenses incurred by him "necessarily in the performance of his duty."—*Held*, that this provision applied only to expenses incurred by a minister in the personal performance of his duty, and did not apply to a sum of money contributed by a minister, who from his age required the services of an assistant, to make up that assistant's salary to a certain fixed sum, the rest of which was raised by the congregation. *LOTHIAN (SURVEYOR OF TAXES) v. MACRAE* [12 C. of S. Cas. 336 (Sc.)]

3. — *Income Tax—Insurance Company—Bonuses to participating Policy-holders—"Annual Profits or Gains"—"Dividend"—5 & 6 Vict. c. 35, s. 54.* A life insurance company issued "participating policies" at an increased premium, according to the terms of which at the end of each quinquennial period "the gross profits" of such policies were thus dealt with: two-thirds were returned by way of bonus or abatement of premiums to the holders of such policies then in force: the remaining third went to the company who bore the whole expenses of the business, the portion remaining after payment of expenses constituting the only profit available for division among the shareholders:—

*Held*, reversing the decision of the Court of Appeal (14 Q. B. D. 239, 54 L. J. Q. B. 4, 52 L. T. 604, 33 W. R. 207, 49 J. P. 564, 1884 Dig. col. 421), by Lords Blackburn and FitzGerald, Lord Bramwell dissenting, that the two-thirds returned to the policy-holders were "annual profits or gains" and assessable to income tax. *LAST v. LONDON ASSURANCE CORPORATION*

[10 App. Cas. 438 (H. L., E.)]

4. — *Income Tax—Profits and Gains—Premium for Lease—5 & 6 Vict. c. 35, Sched. D—16 & 17 Vict. c. 34—41 & 42 Vict. c. 15, s. 12.* In order to ascertain what are the profits and gains of a trade for the purposes of 5 & 6 Vict. c. 35, Sched. D, the annual expenditure (one

**REVENUE—continued.**

element of which is the rent) should be deducted from the gross profits and gains. Where a lessee pays a ground-rent of £250 per annum, having already paid £34,000 as a premium for a lease of twenty-two years, he has no right to deduct one twenty-second part of the premium in each year, although the lease sinks in value as each year is cut off from it. The right principle is to deduct nothing in the way of outlays of money in the shape of expenditure of capital for the future benefit of the estate, but only what may be called current expenditure—that is, the average current repairs for a period of three years, or one year, as the case may be. So *held*, by Grove and Smith, JJ. *GILLATT & WATTS v. COLQUHOUN* 33 W. R. 258'

5. — *Income Tax—"Person residing in United Kingdom"—Foreign Firm—English Agents—5 & 6 Vict. c. 35, ss. 41, 44—16 & 17 Vict. c. 34, s. 2, Sched. D.]* The Appellants, a firm of wine merchants at Bordeaux, employed a London firm as agents for the sale of their wines in England. One of the Appellants spent about four months each year in England, and lived during that time chiefly in London, and then always at an hotel, having no other place of residence in England. When in England he took orders for wines, which were shipped at Bordeaux, sometimes to the purchaser direct and sometimes to the agents, who collected all the accounts and received all the moneys, and were paid a commission covering all their expenses and including a guarantee of all debts for wine sold in England. A room was provided in the agents' office for the Appellants' use, the rent of which was paid by the Appellants, their name being painted on the premises, and their own clerk being there:—*Held*, by Mathew and Smith, JJ., that the Appellants "exercised a trade" within Sched. D to sect. 2 of 16 & 17 Vict. c. 34, and were assessable to the income tax respecting the profits thereof; and further, that 5 & 6 Vict. c. 35, s. 41, was passed in aid and not in derogation of the rights of the Crown in collecting the revenue, and not in any way to alter the incidence of taxation. *TISCHLER v. APTHORPE* - - - 52 L. T. 814, 33 W. R. 548, [49 J. P. 372]

6. — *Inhabited House Duty—Exemption—Caretaker—Servant or other Person—Customs and Inland Revenue Act, 1878 (41 Vict. c. 15), s. 13, sub-s. 2—Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), s. 24.]* A female caretaker resided on premises, and it was a condition of her employment that her son, who was a clerk, employed elsewhere, should sleep on the premises for their better protection:—*Held*, by Mathew and Smith, JJ., that the premises were not exempt from inhabited house duty under 41 Vict. c. 15, s. 13, sub-s. 2. *WEGUELLIN (or WEGUELIN) v. WAYALL (or WYATT)* - - - 14 Q. B. D. 838, 54 L. J. [Q. B. 308, 52 L. T. 807, 33 W. R. 566, [49 J. P. 486]

7. — *Inhabited House Duty—Separate Tenements—House occupied solely for Purposes of Trade—Customs, &c., Act, 1878 (41 Vict. c. 15), s. 13, sub-ss. i., ii.]* A house of three stories belonging to a Banking Co. was thus occupied: The front part of the ground floor was occupied by themselves as a bank, the entrance door being



**REVENUE—continued.**

upon the street; the back part of ground floor was let to their agent, and used by him as a stamp office, the door and lobby of this part of the building entering from a side lane. There was a private door of communication between the bank and the stamp office lobby. From the stamp office lobby a stair led up to a lobby which ran along the whole depth of the first floor. All the rooms on the first floor opened each by its own door off this lobby, and were let to the bank agent as writing chambers. About the middle of this lobby was a door closing the foot of a stair which led to the uppermost story. That story was occupied rent-free by the bank accountant as a dwelling-house, being part of his emoluments:—*Held*, that the house fell to be assessed for inhabited house duty upon its whole value, and that no deduction from the full assessment on the value of the whole house fell to be made under the above section, it being neither “occupied solely for the purposes of any trade or business,” nor “divided into and let in different tenements,” some of which were so occupied. *CLERK v. BRITISH LINEN CO.* 12 C. of S. Cas. 1133

(8c.)

8. — *Probate Duty—Lunatic—Accumulations of Personal Estate—Investment in Realty—Conversion.*] The committees of a lunatic acting under the orders of the Lords Justices of Appeal sitting in Lunacy invested the accumulations of the personal estate of the lunatic in the purchase of land. The conveyances to the committees contained, in conformity with such orders, declarations that the land purchased should to all intents and purposes be considered as part of the personal estate of the lunatic, but contained no trust for sale:—*Held*, by Mathew and Smith, JJ., that on the death of the lunatic the value of the investment was personal estate liable to probate duty. *ATTORNEY-GENERAL v. MARQUESS OF AILSBURY*

[14 Q. B. D. 895, 54 L. J. Q. B. 324, 52 L. T.

[809, 33 W. R. 731

9. — *Stamps—Agreement in form of Promissory Note—Stamp Act, 1870 (33 & 34 Vict. c. 97), ss. 15, 49, 53.*] A written promise to pay a sum of money upon a contingency is, for the purposes of the above Act, a promissory note; it may not therefore be treated as an agreement, and stamped after execution. So *held* (32 W. R. 203) by Grove, J., and Huddleston, B.

*Held*, on appeal, by Brett, M.R., and Baggalay, L.J., *diss.* Bowen, L.J., that such a document did not require stamping as a promissory note, but was admissible in evidence with an agreement stamp. *YEO v. DAWE* 53 L. T. 125, 33 W. R. 739

[(C.A.)

10. — *Stamps—Agreement—Stamp Act, 1870 (33 & 34 Vict. c. 97).*] An unstamped document embodying an agreement, not falling within the exceptions specified in the Act 33 & 34 Vict. c. 97, is inadmissible in evidence in civil proceedings for any purpose whatever. *INTERLEAF PUBLISHING CO. v. PHILLIPS* — 1 C. & E. 315

11. — *Stamps—Dissolution of Partnership—Sale or Partition to retiring Partner—Stamp Act, 1870 (33 & 34 Vict. c. 97), ss. 71, 72.*] Two partners in a trading concern dissolved partnership, the one continuing the business and handing over an equal half (being about £8900) of the

**REVENUE—continued.**

property and assets of the company to the other, who retired. £8000 of this sum was paid in the form of an assignation to a heritable security for that amount held by the firm. The rest was paid in cash:—*Held*, that this transaction constituted a partition or division, and that the assignation was not a conveyance or a sale in terms of the above Act.

*Christie v. Inland Revenue Commissioners* (2 Ex. D. 46) distinguished. *MACLEOD v. COMMISSIONERS OF INLAND REVENUE*

[12 C. of S. Cas. 1045 (Sc.)

12. — *Stamps—Receipt or Agreement—Stamp Duties Act, 1870 (33 & 34 Vict. c. 97), ss. 17, 120, 122.*] F. granted to W. an unstamped document in the following terms: “Received from W., on loan, £400. F. 10th Nov. 1881.” In an action on the document, *held* (*diss.* Lord Rutherford Clark), that it was not a receipt in the sense of the above Act, but was an agreement, which was receivable in evidence on being after-stamped in terms of the statute; Lord Young being also of opinion that the document might be regarded as a mere acknowledgment of indebtedness, admissible in evidence without a stamp. *WELSH'S TRUSTEES v. FORBES* — 12 C. of S. Cas. 851 (Sc.)

13. — *Succession Duty—Covenant by Settlor for Payment of a Sum of Money during his Life or after his Death—“Free from all Deductions”—Succession Duty Act (16 & 17 Vict. c. 51), ss. 1, 42, 44—Legacy Duty Act (36 Geo. 3, c. 52), s. 6.*] By a post-nuptial settlement the settlor, the wife's father, covenanted with the trustees for payment to them during his life, or within twelve calendar months after his death, of the sum of £10,000, “free from all deductions whatsoever,” and an annuity of £200 in the meantime. On the death of the settlor his executor paid the full £10,000 to the trustees:—

*Held*, by Bacon, V.C., that succession duty on the £10,000 was payable by the trustees and not by the executor. *Re HIGGINS. DAY v. TURNELL*

[29 Ch. D. 697, 54 L. J. Ch. 769, 52 L. T. 889,

[33 W. R. 573

[*Affd.* by C.A., 34 W. R. 81, W. N. (1885) 200.]

**REVERSION** — Married woman's, falling into possession since 1882—Accruer of title.

See HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS. 8—11.

**REVISING BARRISTER.**

See PARLIAMENT. 2, 5—8.

**REVOCATION—Will.**

See WILL—REVOCATION.

**RIGHT OF WAY.**

See WAY.

**RIPARIAN OWNER.**

See WATER.

**RIVER.**

See WATER.

**ROAD**—Covenant to make and maintain—Running with land.

See COVENANT. 5.

— Highway.

See HIGHWAY.

— Right of way.

See WAY.

**ROYAL CHARTER**—Company incorporated by—  
Winding-up of.  
See **COMPANY**—WINDING-UP. 15.

**RULE**—Against justices—Refusal to hear case.  
See **JUSTICES**. 5, 6.

**RULE OF COURT**—Agreement to appoint valuers  
on expiration of tenancy.  
See **ARBITRATION**. 2.

**RULES**—Building society's.  
See **BUILDING SOCIETY**.

— Bankruptcy.  
See **LIST OF RULES AT BEGINNING OF  
DIGEST**.

**RULES OF THE SUPREME COURT.**  
See **LIST OF RULES AT BEGINNING OF  
DIGEST**.

## S.

### SAILING RULES.

See **SHIP**—COLLISION. 9—16.

**SALARY** — Of bankrupt — Setting aside, for  
creditors.

See **BANKRUPTCY**—ASSETS. 2.

**SALE**—By official receiver when acting as trustee  
in bankruptcy.

See **BANKRUPTCY**—OFFICIAL RECEIVER. 2.

— Goodwill—Vendor setting up new business.  
See **GOODWILL**.

— Power of—Mortgage.

See **MORTGAGE**—POWER OF SALE.

— Realty.

See **VENDOR AND PURCHASER**.

— Shares.

See **STOCK EXCHANGE**.

— Shares—Representative of beneficial owner.

See **ADMINISTRATOR**. 7.

— Ship—Practice.

See **PRACTICE**—ADMIRALTY. 10, 14, 15.

— Trust for—Postponing sale.

See **TRUSTEE**—POWERS. 2.

### SALE OF FOOD AND DRUGS ACT, 1875.

See **ADULTERATION**.

**SALE OF GOODS**—Contract—Statute of Frauds,  
s. 17—Acceptance—Act recognising the Contract.]

It is not necessary in order to satisfy the requirements of the 17th section of the Statute of Frauds that there should be an absolute acceptance of goods: there is sufficient evidence of an acceptance of goods within the section where upon delivery of the goods the purchaser has received them and done any act in relation thereto recognising the existence of a contract for the purchase of them by him, though he subsequently refuses the goods. So, where there was a sale of wheat by sample, and the purchaser, having received a number of sacks of wheat delivered under the contract into his premises, opened the sacks and examined their contents to see if they were equal to sample, but immediately after so doing gave notice to the seller that he refused the wheat as not being equal to sample:—*Held*, that there was evidence of an acceptance.—*Kibble v. Gough* (38 L. T. (N.S.) 204)

### SALE OF GOODS—continued.

followed.—*Rickard v. Moore* (38 L. T. (N.S.) 841) discussed. PAGE *v. MORGAN*. 15 Q. B. D. 228, 54 [L. J. Q. B. 434, 53 L. T. 126, 33 W. R. 793 (C.A.)]

2. — *Lien—Stoppage in Transitu—End of Transit—Destination—Goods bought by Commission Agent in England for Foreign Principal—Bankruptcy of Agent.*] A commission agent in London was employed by merchants at Kingston, Jamaica, to buy goods for them in England. He ordered the goods of the manufacturers "for this mark," there being in the margin of the letter which gave the order a mark consisting of two letters, with "Kingston, Jamaica," added. The manufacturers knew from previous dealings that this mark had been used by the Jamaica firm. The goods were to be paid for by six months bills drawn by the manufacturers on the commission agent and accepted by him. On the 11th of September the commission agent wrote to the manufacturers, telling them to pack the goods and mark them with the mark previously mentioned, and to forward them to specified shipping agents at Southampton, for shipment by a particular ship, "advising them with particulars for clearance." On the 13th of September, the manufacturers sent the invoice of the goods to the commission agent, telling him that they had that day forwarded the goods by railway to the shipping agents "with the usual particulars for clearance." The same day the manufacturers wrote to the shipping agents, sending them the particulars of the goods, and adding, "which please forward as directed." The particulars described the goods as marked with the letters originally given by the commission agent, and the words "Kingston, Jamaica," and numbered with specified numbers, but the columns for "consignee" and "destination" were left in blank. The cost of the carriage to Southampton was paid by the manufacturers. On the 14th of September, the commission agent sent to the shipping agents particulars of the goods, giving the name of the Jamaica firm as consignees, and stating the destination of the goods to be Kingston, Jamaica. The goods were shipped on board the vessel, the bills of lading describing the commission agent as consignor, and the Jamaica firm as consignees. After the ship had sailed, but before her arrival at Jamaica, the commission agent stopped payment, and the manufacturers, who had not been paid for the goods, gave notice to the shipowners to stop them *in transitu*:—*Held*, that, as between the commission agent and the manufacturers, the transit was at an end when the goods arrived at Southampton, and that the notice to stop was given too late.—*Ex parte Watson* (5 Ch. D. 35), distinguished. *Ex parte Miles. Re ISAACS* 15 Q. B. D. 39, 54 L. J. Q. B. 566 (C.A.)

3. — *Rescission—Sale of Ship—Price to be paid in exchange for Bill of Sale—Delay of a month in tendering Bill of Sale.*] By written offer and acceptance, dated 8th June, a schooner was sold "for the sum of £375 sterling, less £5 discount. The said sum to be paid for and in exchange for bill of sale." On 12th June the buyer proposed to take delivery, but, on being informed that the seller would be unable to tender the bill of sale for a month (the ship having belonged to his deceased father), the buyer repudiated the transaction. In an action of damages by the seller

**SALE OF GOODS—continued.**

against the buyer, *held* (*dub.* the Lord Justice-Clerk) that the Defendant was not entitled to repudiate the transaction, and was liable in damages for breach of contract. *FORBES v. CAMPBELL.*  
[12 C. of S. Cas. 1065 (Sc.)]

4. — *Warranty—Horse—Agent—Fraudulent representation by—Horse-dealer.* The Defendant, a proprietor of a riding school, who was in the habit of buying and selling horses, entrusted his servant to deliver for approval and negotiate for the sale of a horse to the Plaintiff. At the trial the jury found (1) that the servant warranted the horse free from disease; (2) that it was suffering from mange, which the servant well knew; and (3) that the master was aware there was something the matter with the horse, but that he did not know the nature of the disease. *Held*, by Huddleston, B., that the master was bound by the servant's warranty. *BALDRY v. BATES*  
[52 L. T. 620]

5. — *Warranty—Implied—Sale of foreign Bonds.* The government of the United States in 1865 issued bonds payable to bearer, redeemable at the pleasure of the government, after 1870, and payable, at all events, in 1885. When the government wished to redeem any of these bonds, they gave notice to holders by public notification that they would be paid on presentation. After such notice, the bonds notified were called "called bonds." These bonds are dealt with in England for the purpose of making remittances to America. The course of business is for the seller to supply the buyer with bonds or coupons of railway companies, &c., payable in America, at an agreed price, no particular bonds or coupons being specified. It was proved that whenever default was made in payment of the coupons in America, the seller returned the money paid for them, but no evidence was given of any case in which payment of a bond had been refused. A. sold to B. in accordance with the above course of business certain "called bonds," which had been originally stolen from American holders, and payment to B. of the bonds was refused by the American government. *Held*, that there was an implied warranty of title on the sale by A. to B., and that B. was entitled to recover from A. the price paid. *RAPHAEL v. BURT*  
[1 C. & E. 325]

6. — *Warranty—Implied warranty—Sale of whisky barrels—Damage by leakage—Contributory negligence.* *POLAND v. MILLER*  
[48 Amer. B. 730 (U.S.)]

- Bread—Delivery by cart without beam and scales.  
*See BREAD.*
- By sheriff.  
*See SHERIFF.*
- Contract—Breach—Measure of damages.  
*See DAMAGES.* 2, 3, 5, 6.
- In market.  
*See MARKET.*
- Lien—Stoppage *in transitu*.  
*See BILL OF EXCHANGE.* 6.
- Passing of property—Indorsement of bill of lading.  
*See SHIP—BILL OF LADING.* 4.

**SALFORD COURT—Prohibition—Inferior Court—Jurisdiction—Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), s. 7.]** Sect. 7 of the Salford Hundred Court of Record Act, 1868, enacts that "no defendant shall be permitted to object to the jurisdiction of the Court otherwise than by special plea, and if the want of jurisdiction be not so pleaded, the Court shall have jurisdiction for all purposes":—*Held*, that the Defendant, against whom judgment had been recovered in the Salford Hundred Court, he not having pleaded to the jurisdiction, could not have a writ of prohibition on the ground of want of jurisdiction, inasmuch as the above-mentioned section under the circumstances conferred jurisdiction on the Salford Hundred Court.—*Oram v. Brearey* (2 Ex. D. 346, 46 L. J. Ex. 481, 36 L. T. 475) overruled. *CHADWICK v. BALL* 14 Q. B. D. 855, 54 L. J. Q. B. 396, [52 L. T. 949 (C.A.)]

**SALVAGE.**

*See SHIP—SALVAGE.*

**SATISFACTION—Covenant to pay annuity—Legacy of lump sum.**

*See WILL—CONSTRUCTION.* 37.

— Double portions—Redemption—Evidence.

*See ADVANCEMENT.* 2.

— Scheme of arrangement of debtor's affairs.

*See BANKRUPTCY—COMPOSITION.*

**SCHOOL—Endowed Schools Act—32 & 33 Vict. c. 56, ss. 9, 19, sub-s. 2—36 & 37 Vict. c. 87, s. 7—Denominational School—Powers of Commissioners—Original Subscribers—Effect of Regulations.]** Where the commissioners by their scheme provided that certain endowments which had heretofore been applied in carrying on the schools of a particular parish, should thenceforth be applied in exhibitions for the benefit of a larger area of schools:—*Held*, that this was within their powers under sect. 9 of the Act of 1869, and that being so the way in which those powers had been exercised was not the proper subject of appeal.

*Held*, that a charity which has no instrument of foundation, or statutes, or duly authorized regulations impressing upon it a denominational character, does not fall within the 19th clause of the Act of 1869, or the 7th clause of the Act of 1873. Its trustees cannot impress upon it that character nor is any practice for the time being as to the application of its funds sufficient evidence of there ever having been regulations in existence which prescribed it.

Where a charity is established by subscriptions, the original subscribers alone are the founders, the later benefactions are on the footing of the original foundation. If its regulations are relied upon as impressing upon it a denominational character, they must be shewn to have been authorized by all the founders, and to have been issued before fifty years from their deaths. *ST. LEONARD, SHORE-DITCH, PAROCHIAL SCHOOLS* 10 App. Cas. 304, [54 L. J. P. C. 30, 51 L. T. 305, 33 W. R. 756 (P.C.)]

**SCHOOL BOARD.**

*See ELEMENTARY EDUCATION ACTS.*

**SCOTCH LAW—Building Society—Bond of Corroboration—Ultra vires.]** A building society advanced in 1876 to A., a member, £1000. A. disposed in security an *ex facie* absolute disposition of certain subjects, which were already burdened

**SCOTCH LAW—continued.**

by a prior mortgage. In 1879 A.'s estates were sequestered, and the directors of the society, in order to prevent a sale of the subjects at an alleged loss, granted B. a bond of corroboration guaranteeing the payment of his prior mortgage.

In 1882 an order for the voluntary winding-up of the society was made, and the liquidators instituted this action concluding for reduction of the bond of corroboration granted to B. as being *ultra vires* of the directors and in violation of the rules and constitution of the society:—*Held*, affirming the decision of the Court below, that the bond was *ultra vires*, being a transaction not authorized by the rules, and not incidental to the conduct of the society's business. *SMALL v. SMITH* 10 App. Cas. 119

[(H. L., Sc.)]

2. — *Estate of domiciled Scotch Testator—Jurisdiction, conflict of—Trust Funds partly in Scotland, partly in England—Power of Scotch Courts to sequester Estate and appoint judicial Factor—Forum conveniens—Confirmation and Probate Act (21 & 22 Vict. c. 56), s. 12—Treaty of Union, 1706 (6 Anne, c. 11), art. 19.* A resident and domiciled Scotchman died, leaving a trust disposition and settlement appointing six trustees; three were resident in Scotland; one being a Scotch member of Parliament, resided in Scotland when parliament was not sitting, and the other two were resident in England. The trustor had a very large amount of personalty in Scotland as well as heritable estate; and a trifling amount of personal estate only in England. The trustees proved the trust deed in Scotland, and were confirmed as executors. They then had the Scotch probate sealed in accordance with 21 & 22 Vict. c. 56, s. 12, and thus became the personal representatives in England. They removed all but a small portion of the personalty in England into Scotland. A person resident in England, who was entitled to a share of a large legacy, and also to a share of the residue, brought an action in England to administer the estate. The trustees were served and entered an appearance. The Plaintiff, an infant, in the English action moved for judgment for administration of the whole estate, and on the 29th of November, 1882, the Court of Appeal granted the order. The trustees lodged an appeal to this House. In June, 1883, the trustees carried certain accounts into Chambers in the English action. On the 5th of July, 1883, four of the residuary legatees commenced this action in Scotland against the trustees for, *inter alia*, declarator that the trustees were bound to administer the estate in Scotland, subject to the Scotch law and under the authority and jurisdiction of the Scottish Courts alone: and that they were not entitled to place the estate under the control of the English Court or any other foreign tribunal furth of Scotland, and for interdict: or, alternatively, to the conclusion for interdict for the removal of the trustees, for sequestration of the estate, the appointment of a judicial factor, and for interdict until the estate should be vested in the judicial factor. On the 30th of November, 1883, this House affirmed the order of the Court of Appeal. On the 29th of February, 1884, the Court of Session granted an interlocutor finding in terms of the declaratory conclusions of the summons: sequestrating the estate, appointing

**SCOTCH LAW—continued.**

a judicial factor and interdicting the trustees from removing any title deeds, &c., from Scotland, or accounting to any one otherwise than the judicial factor.

On appeal taken by order of the Court of Chancery in England:—

*Held*, that the decerniture in terms of the declaratory conclusions of the summons, which in effect affirms the exclusive competency of the Scottish jurisdiction, was not supported by statute nor authority; and, therefore, that part of the principal interlocutor and that part of the interdict relating to accounting must be reversed; but the remaining portion of the principal interlocutor and the others appealed from must be affirmed, because the Scotch Courts had (1) full jurisdiction to sequester the estate in Scotland—the persons of the trustees and the trust property being there—and to appoint a judicial factor: and (2), because in the circumstances and on the undertaking given as to the infant Plaintiff becoming a party to the Scotch administration, a *prima facie* case of convenience in favour of a judicial administration in Scotland had been made out.

Lord Cottenham in *Preston v. Melville* (2 Rob. App. 107) explained, and Lord Westbury in *Enohin v. Wylie* (10 H. L. C. 13) dissented from *EWING v. ORR EWING* 10 App. Cas. 453 (H. L., Sc.)

3. — *Minerals—"Disposition of Lands with a reservation of the liberty of working the Coal"—Right of Property retained.* Where the owner conveys land to a singular successor or other person, reserving the "liberty of working the coal" in those lands, he must be taken to have reserved the estate of coal (unless there are clear words in the deed qualifying that right of property) with which he stands vested by infestment at the date of the conveyance. *HAMILTON (DUKE OF) v. DUNLOP* 10 App. Cas. 813 (H. L., Sc.)

4. — *Nullity of Marriage—Impotence of the Man—Want of Sincerity as a Bar to the Action—Canon Law—Triennial Cohabitation.* In a suit for nullity of marriage on the ground of impotency, there may be facts and circumstances proved, which so plainly imply on the part of the complaining spouse a recognition of the existence and validity of the marriage, as to render it most inequitable, and contrary to public policy, that he or she should be permitted to go on to challenge it with effect; but the doctrine, designated as the "doctrine of want of sincerity" in an action of this kind, has been too much extended in recent English decisions, and that doctrine, apart from "approbate" and "reprobate," has never been recognised by the law of Scotland.

Delay in raising a suit of nullity on the ground of impotency is a material element in the investigation of a case which upon the facts is doubtful; but there is no definite or absolute bar arising from it.

The Canon Law rule of triennial cohabitation has not been recognised in England beyond this point, that where a husband or a wife seek a decree of nullity *propter impotentiam*, if there is no more evidence than that they have for a period of three years lived together in the same house, and with ordinary opportunities of intercourse, and it is clearly proved there has been no consummation,

**SCOTCH LAW—continued.**

then if that is the whole state of the evidence, inability on the part of the one or of the other will be presumed. On the other hand, the presumption to be drawn from the fact of non-consummation after three years' cohabitation is capable of being rebutted. And, also, every case need not be fortified with the presumption; for although no presumption can be raised from the absence of consummation within a less period than three years, yet positive evidence may be given, from which the same inference of inability may be drawn. See Lord Watson's opinion, that to this extent the Court of Session would not hesitate to adopt the rule.

G. and M. were married in 1877. They slept in the same bed for about nineteen months, but during only two months and a half of that time did G., the husband, make any attempt to consummate the marriage. He desisted on account, he alleged, of his wife's increasing coldness and repugnance to him. It was admitted that the marriage had never been consummated. In 1879 the parties finally separated, the wife living on her own income with her relations, the husband not giving anything towards her support. In 1882 the wife gave birth to a child of which G. was not the father. G. instituted an action for divorce which M. defended, and she then raised this action of declarator of nullity of marriage on the ground of G.'s impotence. G. denied his impotence. He was personally examined, and the medical evidence was that no malformation was apparent from his appearance:—

*Held*, affirming the decision of the Court below, that M. was not barred *personali exceptione* from insisting in this action; and that G.'s impotence had been proved. *G. v. M. (or GORDON v. MERRICKS)* 10 App. Cas. 171, 53 L. T. 398, [12 C. of S. Cas. (H. L.) 36 (H. L., Sc.)]

5. — *Railway—Broken Bridge in navigable River—Removal of Débris to satisfaction of Board of Trade, Meaning of—Construction of Statute.* [The North British Railway (New Tay Bridge) Act, 1881, gave the North British Railway authority to erect a new bridge over the Tay a little higher up the river than one blown down on the 28th of December, 1879. Sect. 21 of this Act provided, "The company shall abandon and cause to be disused as a railway so much of the North British Railway as lies between the respective points of junction therewith of railway No. 1 and railway No. 2; and shall remove the ruins and *débris* of the old bridge, and all obstructions interfering with the navigation caused by the old bridge, to the satisfaction of the Board of Trade." The magistrates of Perth, whose jurisdiction extends down the river to within about three miles of the old bridge, raised an action for declarator and implement:—

*Held*, (1) that the special Act imposed an absolute obligation to remove the whole ruins and *débris* of the old bridge; and sect. 21 did not give the Board of Trade a discretionary power to dispense with the performance of any part of this obligation; and it followed that the Respondents had an interest to obtain a declarator as to the extent of the obligation; but (2), dissenting from the judgment of the Court below, the obligation did not become immediately prestable; and (3) the import of, the expression "to the satisfaction

**SCOTCH LAW—continued.**

of the Board of Trade" was, that though not bound to submit their plans of removal, including the time and manner, yet, as a matter of prudence, the company ought to do so; (4) that in the circumstances it would be inexpedient, though hardly incompetent, to do more now than simply ordain the company to remove the whole ruins and *débris* in terms of sect. 21, for to order the removal "forthwith" might unduly hamper the discretion of the Board of Trade; and if the company were guilty of undue delay in applying to the Board of Trade; or if they should proceed at their own hand so as to cause obstruction to navigation; or if after obtaining the sanction of the Board of Trade to some scheme of removal, they failed to properly execute it, or any conditions attached, the Respondents, on application to the Court, had an effective remedy. *NORTH BRITISH RAILWAY COMPANY v. PROVOST OF PERTH* — 10 App. Cas. 579 (H. L., Sc.)

6. — *Railway—Stoppage of all Trains—Construction of Feu Contract.* [By feu charter, dated 1863, between A., the proprietor of land through which a railway was authorized to run, and the railway company, it was provided that the company should be bound to erect, on a piece of ground conveyed to them by A. at a nominal feu rent, "a station for passengers and goods travelling by the said" railway, "at which all passenger trains shall regularly stop," to be called Crathes Station.

The station was erected. Subsequently certain trains were run, namely (1) excursion trains at low fares to certain places on the line, but not to Crathes Station. They were advertised by special handbills, and were not included in the time-tables except in error. (2) Trains called the Queen's messenger trains, ran by agreement with the Home Office, who paid the railway company a subsidy. (3) Trains, called the Post Office trains, ran by agreement with the Post Office, who also paid a subsidy. The Queen's messenger trains and the Post Office trains only ran during Her Majesty's stay at Balmoral; but they were advertised in the railway company's time-table, and through passengers were allowed to travel by them. They stopped at Crathes by signal, but did not stop regularly for setting down or taking up passengers. There was no contract with the Home Office or Post Office that they should not do so.

A. sought declarator that all trains, including the above, except only such as might be hired for an individual or individuals for his or their exclusive use, should regularly stop:—

*Held*, reversing the decision of the Court below, that the trains called the Queen's messenger trains and the Post Office trains fell within the terms of the contract; but agreeing with the decision of the Court below, that the excursion trains in the circumstances materially differed from ordinary passenger trains, and did not come within the obligation. *BURNETT v. GREAT NORTH OF SCOTLAND RAILWAY COMPANY* 10 App. Cas. 147, [54 L. J. Q. B. 531, 53 L. T. 507, 12 C. of S. Cas. (H. L.) 25 (H. L., Sc.)]

7. — *Solicitor and Client—Agreement as to Remuneration.* *CLARK v. FIELD or MONTEITH* [W. N. (1885) 108 (H. L., Sc.)]

8. — *Superior and Vassal—Irritancy ob non*

**SCOTCH LAW—continued.**

*solutum canonem*—Statute 1597, c. 250—*Extinction of Sub-feu held under defaulting Vassal—Right of Sub-feuar to purge the Irritancy.*] An action of declarator of tinsel of a feu *ob non solutum canonem* is an irredeemable adjudication of the feu in favour of the superior; but the sub-feuar can protect himself from eviction by paying the superior's full preferable debt, and when he does so he has a claim of relief *pro rata* against all the owners of the land on which that debt is charged.

It is provided by the Scotch Statute 1597, c. 250, that the vassal shall lose the feu of his lands by his failure to pay the feu duty for two years together, in like manner as if an irritant clause to that effect had existed in his feu contract.

By feu contract A. disposed in feu farm to B. and C. five acres of building land, with an annual reddendo of £480. The contract of feu contained the express declaration "that in case at any time two years' feu duty shall be fully resting, owing and unpaid together, then this present feu right, and all that may follow hereon, shall, in the option of the superior, become void and null." B. and C. divided the lands between them, and each granted, *inter alia*, sub-feus (narrating in the deeds conveying the land the above-mentioned feu contract) of portions of the five acres to D. and E. respectively.

Upwards of four years' feu duties became due. A. raised an action of declarator of irritancy *ob non solutum canonem*. D. and E. contended that the irritancy must be confined to the mid-superiorities created by B. and C., and had no effect on the portions of land sub-feued on their tendering the sub-feu duty reserved on each:—

*Held*, reversing the decision appealed from, but affirming *Cassels v. Lamb* (12 Court Sess. Cas. 4th Series, 722), that the superior's right was not merely a charge upon the mid-superiorities, but a right to annul the charter of his feuars and all sub-feus made by them, to the effect of resuming the full beneficial possession of the lands feued.

*Held*, also, that the circumstances did not warrant the conclusion that the superior had consented to the sub-infeudation. *SANDEMAN v. SCOTTISH PROPERTY SOCIETY* 10 App. Cas. 553 (H. L., Sc.)

9. — *Superior and Vassal—Crown—Relief of Public Burdens—Personal or Transmissible.* *ORR EWING v. EARL OF CAWDOR* 12 C. of S. Cas. [(H. L.) 12, W. N. (1884) 214 (H. L., Sc.)]

10. — *Way—Public Right of—Prescription—Non-user for a long Period—Presumption.*] According to the law of Scotland, the constitution of a public right of way does not depend upon any legal fiction, but upon the fact of user by the public as matter of right, continuously and without interruption for forty years.

And the amount of user must be such as might have been reasonably expected, if the road in dispute had been an undoubted public highway.

Also, the user must be a user of the whole road as a means of passage from one terminus to the other, and must not be such a user as can be reasonably ascribed either to private servitude rights or to the license of the proprietor.

The continued exclusion of the public from the use of an alleged public road for thirty-seven years will not, *per se*, destroy a pre-existent right of public way unless it is maintained for the prescrip-

**SCOTCH LAW—continued.**

tive period of forty years, but it is strong evidence that no such public right ever existed.

See Lord Blackburn on the difference of English law. *MANN v. BRODIE* - 10 App. Cas. 373, [12 C. of S. Cas. (H. L.) 52 (H. L., Sc.)]

— Peerage—Evidence.

See PEERAGE.

**SEAL**—Contract by corporation.

See ELEMENTARY EDUCATION ACTS. 3;

HIGHWAY. 1;

PUBLIC HEALTH ACTS. 3, 4.

**SEAMEN**—Wages of.

See SHIP—WAGES.

**SECURED CREDITOR.**

See BANKRUPTCY—SECURED CREDITOR.

**SECURITY**—Bill of exchange—Appropriation of securities.

See BILL OF EXCHANGE, 4—8.

— Damages—Foreign government—Counter-claim.

See PRACTICE—ADMIRALTY. 16.

— Interrogatories—Deposit—Numerous defendants.

See PRACTICE—DISCOVERY—INTERROGATORIES. 1.

— Receiver's—Equitable execution.

See PRACTICE—RECEIVER. 2.

**SECURITY FOR COSTS.**

See PRACTICE—COSTS. 11—22.

**SEPARATE PROPERTY.**—Married woman's.

See HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS;  
HUSBAND AND WIFE—WIFE'S PROPERTY.

**SEPARATION DEED.**

See HUSBAND AND WIFE—SEPARATION DEED.

**SEQUESTRATION**—Benefice—Dilapidation.

See ECCLESIASTICAL LAW. 2.

— Corporation—Disobedience to injunction.

See PRACTICE—SEQUESTRATION.

**SERVANT.**

See MASTER AND SERVANT.

**SERVICE**—Affidavit—Attachment—Irregularity.

See PRACTICE—ATTACHMENT OF PERSON.

— Bastardy Summons—Scotland.

See BASTARDY. 1.

— Notice of appointment of receiver—Foreigner out of jurisdiction.

See PRACTICE—RECEIVER. 5.

— Order for Taxation—*Fi. fa.*

See SOLICITOR—BILL OF COSTS. 26.

— Petition for restitution of conjugal rights—Service abroad.

See PRACTICE—DIVORCE. 9.

— Writ of summons.

See PRACTICE—WRIT.

**SESSIONS**—Case stated—Appeal from Divisional Court.

See PRACTICE—APPEAL. 2.

— Poor rate appeal.

See POOR RATE. 1.

**SET-OFF**—Loan from father to son—Lapse of *de vise*—Debt due from *heir-at-law*.] *M.*, having

**I-OFF—continued.**

rowed £200, advanced it to his son, to enable him to stock a farm, and subsequently paid off the debt without taking any acknowledgment of any debt from the son, except that he received interest on him for some years.

*Held*, by North, J., that there was a debt due from M. to his son which could be set off against a share of M.'s residuary personal estate coming to the son as one of the next of kin.

M., by his will, devised his realty to his executors and trustees to be converted, and divided equally amongst five persons; one of whom died in his lifetime—and a portion of the testator's realty lapsed to his heir-at-law, who was indebted to the testator. The realty was sold, and the proceeds received by the living executor and trustee, who claimed to set the debt against the value of the descended realty. *Held*, that the executor could not set off the debt against the lapsed realty which had descended to the debtor as heir-at-law. **MILNES (or MILNER) v. HERWIN** - 33 W. R. 927, 53 L. T. 534.

[W. N. (1885) 169]

- Costs—Action by debenture holders.  
See COMPANY—DEBENTURES. 1.
- Damages or costs—Cross judgments in separate actions.  
See SOLICITOR—LIEN. 9.
- Debtor and creditor.  
See BANKRUPTCY—MUTUAL DEALINGS.
- Jersey, Law of—Liquid demand.  
See COLONIAL LAW. 8.
- Pleaded as counter-claim.  
See PRACTICE—COSTS. 5.
- Shares—Director's qualification—Advances to company.  
See COMPANY—DIRECTORS. 2.
- Winding-up.  
See COMPANY—WINDING-UP. 16, 17.
- Winding-up—Unliquidated damages.  
See CONTRACT. 6.

**SETTLED ESTATE.**

See SETTLED ESTATES ACTS.

SETTLED LAND ACTS.

SETTLEMENT.

TRUSTEE.

TRUSTEE ACTS.

TRUSTEE RELIEF ACT.

- Lunatic tenant for life—Improvements—Expenses of.  
See LUNATIC. 6.

**SETTLED ESTATES ACTS—40 & 41 Vict. c. 18, s. 50—Married Woman—Consent of—Examination—Petition for Confirmation of Contract of Sale—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 2.]** Notwithstanding the provision of sect. 50 of the Settled Estates Act, 1877, that, when a married woman consents to an application to the Court under the Act, she is to be deemed apart from her husband as to her consent, an examination is not now necessary in the case of a woman who has married since the commencement of the Married Women's Property Act, 1882. **RIDDELL v. ERRINGTON** - 26 Ch. D. 220, [54 L. J. Ch. 293, 50 L. T. 584, 32 W. R. 680]

**2. — 40 & 41 Vict. c. 18, s. 50—Married man—Separate Examination—Married Wo-**

**SETTLED ESTATES ACTS—continued.**

*men's Property Act, 1882 (45 & 46 Vict. c. 75) s. 1.]*

In the case of a woman married before the commencement of the Married Women's Property Act, 1882, sect. 1 of the Act applies only as to property acquired by her after the commencement of the Act.

Therefore, if such a woman is a petitioner or a respondent to a petition, under the Settled Estates Act, 1877, relating to property her interest in which was acquired before the commencement of the Act of 1882, she must be examined separately, as provided by sect. 50 of the Act of 1877. *Re HARRIS' SETTLED ESTATES* - 28 Ch. D. 171, [54 L. J. Ch. 208, 51 L. T. 855, 33 W. R. 393]

**3. — 40 & 41 Vict. c. 18, s. 50—Married Woman—Separate Examination—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 32.]** On a petition under the Settled Estates Act, 1877, for the sanction of the Court to the purchase of certain land by the trustees of a settlement out of funds in Court arising from sales of settled hereditaments, the separate examination of a married woman, the tenant for life, was ordered by Kay, J., notwithstanding sect. 32 of the Settled Land Act, 1882. *Re ARABIN'S TRUSTS* 52 L. T. 728, W. N. (1885) 90

**SETTLED LAND ACTS—Appointment of Trustees for Purposes of Act—(45 & 46 Vict. c. 38), s. 2, sub-s. 1—Definition of Settlement—Original and derivative Settlements.]** When a complete settlement of land has been made, and derivative settlements have been afterwards made by persons who take interests (not yet in possession) under the original settlement, the original settlement alone is the settlement for the purposes of the Settled Land Act.

The Court will not in general appoint as trustees of a settlement for the purposes of the Act two persons who are near relatives to each other. There ought to be two independent trustees. So *held*, by Pearson, J. *Re KNOWLES' SETTLED ESTATES*

[27 Ch. D. 707, 54 L. J. Ch. 264, 51 L. T. 655, [33 W. R. 364]

**2. — Equitable Tenant for Life—Married Woman—Right to receive Rents—Injunction—S. L. Act, 1882 (45 & 46 Vict. c. 38), ss. 2 (viii), 6, 7, 13, 38, 45, 56, 61: S. L. Act 1884 (47 & 48 Vict. c. 18), s. 5—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (i).]** B. by her will made in 1878, directed her trustees to stand possessed of the net rents of her real estate, upon trust to pay the same to W., a married woman, for life, for her separate use, her receipt alone to be a sufficient discharge to the trustees; and B. directed her trustees out of the rents of her realty, to keep in repair all the buildings on the estate during the period of their trust, and also the chancel of P. church. No power of sale or leasing was contained in the will.

*Held*, by Pearson, J., that, notwithstanding the direction to the trustees with respect to repairs, W. was equitable tenant for life of the settled land, and, as such, was entitled to be let into possession and management of the estate, upon her undertaking to see to the repairs.

But *held*, that, inasmuch as there were no trustees of the settlement created by the will for the purposes of the S. L. Act, 1882, W. was not entitled to exercise the powers of a tenant for life under

**SETTLED LAND ACTS—continued.**

that Act until trustees of the settlement were appointed, and a proper notice of her intention was given them. *Re BENTLEY, WADE v. WILSON*

[54 L. J. Ch. 782, 33 W. R. 610]

3. — *Heirlooms—Sale—Application of Proceeds—Discharge of Incumbrances—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21, sub-s. ii., 37, 58.*] The money arising by the sale, on the application of the tenant for life with the sanction of the Court, of chattels treated in a settlement as heirlooms, and so far as the rules of law and equity would permit annexed to the settled freehold land, may be applied in the discharge of incumbrances affecting the inheritance of the settled land, without keeping such incumbrances on foot for the benefit of the infant remainderman in whom the heirlooms would, if unsold, have vested absolutely on his attaining twenty-one. *Re DUKE OF MARLBOROUGH'S SETTLEMENT. DUKE OF MARLBOROUGH v. MARJORIBANKS* 30 Ch. D. 127, 54 L. J. Ch. 833, [53 L. T. 216, 33 W. R. 871]

4. — *Improvements—Silos—Past and future Expenditure—Concurrence of Trustees—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 21, 25 (xi.).*] Although silos would probably come within the word "buildings" in s. 25 (xi.) of the above Act, the Court will not order payment out of capital trust-money for the erection of silos while they are experimental and not certainly improvements.

Whether the Court would order such a payment for past expenditure, *quære*.

*Semble*, trustees should appear separately on an application for an order for payment for improvements under s. 21, and should not concur with the applicant.

Decision of Bacon, V.C., affirmed. *Re BROAD-WATER ESTATE* 54 L. J. Ch. 1104, 33 W. R. 738 [(C.A.)]

5. — *Improvements—Settled Heirlooms—Power of Tenant for Life to sell—Leave of the Court—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. vii.; s. 25, sub-ss. i., iii., x., xi., xiii.; s. 37—Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.*] A tenant for life under a settlement containing a discretionary trust for sale of the settled estates, and also a power to sell certain settled heirlooms, asked leave of the Court under sect. 37 of the Settled Land Act, 1882, that he might be authorized to sell part of the settled estates, and also a specified portion of the heirlooms; that the money might be paid to the trustees, and that such part as might be necessary might be applied by them in paying for certain improvements, consisting of (1) a larger and better supply of water to a mansion-house; (2) a new and improved system of drainage of the mansion-house; (3) rebuilding of the stables, which were out of repair; (4) the building of an agent's house; and (5) the building of two cottages.

The trustees submitted that the proposed improvements (except the cottages) were not within the 25th section of the Act of 1882; and, that even if they were, the Court would not supersede the power of the trustees by giving leave to the tenant for life to sell either the estate or the heirlooms:—

*Held*, by Bacon, V.C., that the proposed outlay was all within sect. 25 of the Settled Land Act, 1882; and would have been authorized without the statute; and leave given to the tenant for life to

**SETTLED LAND ACTS—continued.**

sell both the settled estates and the heirlooms, and for the application of the proceeds as prayed. *Re HOUGHTON (or CHOLMONDELEY'S) ESTATE* 30 Ch. D. 102, 55 L. J. Ch. 37, 53 L. T. 196, 33 W. R. 869

6. — *Infant having Powers of Tenant-for-life—Construction of Will—Vested Estate, liable to be divested—45 & 46 Vict. c. 38; ss. 56 (ii), 60.*] J., by his will, devised all the residue of his realty to trustees upon trust for his six younger children, and directed that in case any one or more of them should die in his lifetime, leaving issue living at the testator's decease, and which issue, being male, should live to attain 21, or dying under that age should leave issue surviving, or being female, should live to attain 21 or be previously married, then the share to which such child so dying would, if he or she had survived the testator, and had attained 21, have become absolutely entitled, should be held upon trust for such his or her issue. *Held*, by Pearson, J., that the two infant children of one of the testator's six younger children who had died in the testator's lifetime took a vested estate in the share of their deceased father, liable to be divested on their dying under 21, and that they had therefore the powers of a tenant for life under the above Act in respect of that share. *Andrew v. Andrew* (1 Ch. D. 410, 45 L. J. Ch. 232, 34 L. T. 82, 24 W. R. 349) followed. *Re JAMES' (THOMAS) SETTLED ESTATES* - 51 L. T. 596, 32 W. R. 898 [W. N. (1884) 172]

7. — *Investment—Money in Court subject to a Settlement by Statute—Payment out to Trustees—Settled Land Act, 1882 (45 & 46 Vict. c. 38) ss. 22, 32, 58, cl. 1 (i.).*] Where funds of large amount were in Court, representing the proceeds of sale of settled lands which were vested in tenant-in-tail who was restrained by statute from alienating, the funds were, on the application of the tenant-in-tail, ordered to be paid out to trustees appointed for the purposes of the Settled Land Acts, 1882 and 1884; but the Court declined to direct the trustees to give notice of any intended investments to the tenant-in-tail next in remainder. *Re BOLTON ESTATES ACT, 1863* 52 L. T. 728 [W. N. (1885) 96]

8. — *Payment of Prior Incumbrances—Land Drainage Charges—Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), ss. 49, 51, 66—Settled Land Act 1882 (45 & 46 Vict. c. 38), ss. 21, 25, 26, 58.*] Where a tenant for life of settled land has prior to the Settled Land Act, 1882, created charges for land drainage and improvements under the Improvement of Land Act, 1864, and other Acts, which were repayable by instalments, he will not be entitled under the Settled Land Act, s. 21, sub-s. 2, to have these charges paid out of the capital of the settled estates so as to relieve him from the payment of the instalments.

Trustees who purchase such charges will hold them upon trust to receive the instalments payable by the tenant for life, and to treat them as capital.

The decision of Pearson, J. (27 Ch. D. 349, 54 L. J. Ch. 154, 51 L. T. 695, 33 W. R. 10, 1885 Dig. col. 436) affirmed. *Re KNATCHBULL'S SETTLED ESTATE* - 29 Ch. D. 588, 54 L. J. Ch. 1168 [53 L. T. 284, 33 W. R. 569 (C.A.)]

9. — *Purchase-money of Lands subsequently to beneficial Lease—Tenant for Life and Remainder* -



**SETTLED LAND ACTS—continued.**

*derman—Application of Income—45 & 46 Vict. c. 38, s. 34—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 74.]* Sects. 34 of the Settled Land Act, 1882, and 74 of the Lands Clauses Act, 1845, are similar enactments, so that where the facts are similar decisions on sect. 74 are authorities on sect. 34.

As between tenant for life and remainderman, where lands subject to a beneficial lease are sold under the Settled Land Act, 1882, the tenant for life will, during the unexpired period of the term, be entitled to so much only of the income of the invested purchase-moneys as equals the rents under the lease, and the rest of that income must be accumulated and invested for the benefit of the inheritance until the date when the lease would have expired. So held, by Kay, J.

*Re Mette's Estate* (L. R. 7 Eq. 72), *Re Wootton's Estate* (L. R. 1 Eq. 589), and *Re Wilkes' Estate* (16 Ch. D. 597) approved. *COTTRELL v. COTTRELL* [28 Ch. D. 628, 54 L. J. Ch. 417, 52 L. T. 486, [33 W. R. 361]

10. — *Tenant for Life—Limited Owner—45 & 46 Vict. c. 38, s. 2, sub-s. 5; s. 56, sub-s. 2; s. 58, sub-s. 1, cl. (ix.).]* Testator by will, dated the 8th of August, 1883, limited an estate to the use of trustees for a term of 1300 years, and subject thereto to his second son H. S., for life, with remainders over in strict settlement. The trusts of the term were to raise portions, to pay annuities, H. S. himself being one of the annuitants, and to apply the residue as a sinking fund to pay off mortgage debts and other charges. The income of the estate was about £26,000 a year, and the amount of the charges about £175,000. It was estimated that the trusts of the term would require from fifteen to twenty years for their fulfilment. The testator directed that the trustees should "during the continuance of the last mentioned trusts" enter into and hold possession of the rents and profits of the estate, "and not deliver the same to any person beneficially interested in any part thereof," and manage the estate as therein mentioned. Very full powers of management were given to the trustees, and the testator provided that when all the trusts of the term should have been fully paid and satisfied the term should cease. He moreover gave to the trustees such other powers over the estate as were given to a tenant for life in possession by the Settled Land Act, 1882:—

*Held*, by Bacon, V.C., that H. S. was not a mere annuitant, but was tenant for life, or a person having the powers of a tenant for life, of the estate within the meaning of sect. 58, sub-sect. 1, cl. (ix.) of the Settled Land Act, 1882, and that his consent was necessary, under sect. 56, sub-sect. 2, to the effectual exercise by the trustees of the powers of sale and enfranchisement contained in the will.

*Re CLITHEROE (or BUCCLEUGH'S) ESTATE* [28 Ch. D. 378, 54 L. J. Ch. 401, 52 L. T. 294 [Affd. by C.A., 34 W. R. 169, W. N. (1885) 209.]

11. — *Tenant for Life—Person having Powers of—Conditional Life Estate—Invalidity of Condition—Application of Proceeds of Sale of Estate—45 & 46 Vict. c. 38, ss. 51, 58, sub-s. 1, cl. vi.]* A testator devised his B. estate to the use of his son, "so long as he shall reside in my present dwelling-house, or upon some part of my B. estate, for not less than three months in each year after

**SETTLED LAND ACTS—continued.**

he shall become entitled to the actual possession thereof;" and, after the death of the son, provided that he should have complied with the condition, to such uses for the benefit of his children as he should by will appoint; and, in default of such appointment, or, if he should fail in compliance with the above condition, on the determination of his estate therein, to the use of trustees, on trust for sale and distribution of the proceeds of sale among the son's children:—

*Held*, by Pearson, J., that the son had the powers of a tenant for life under the Settled Land Act, and could sell the estate, and that, notwithstanding the condition as to residence, he would, by virtue of sect. 51 of the Act, be entitled to the income of the proceeds of sale during his life. *Re PAGET'S SETTLED ESTATES* - 30 Ch. D. 161, [55 L. J. Ch. 42, 53 L. T. 90, 33 W. R. 898]

12. — *Tenant for Life—Persons having Powers of Tenant for Life—Discretionary Trust for Application of Income during Life—Forfeiture in Event of Bankruptcy—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 5, 6, 10, cl. i., 51, 58, sub-s. 1, cl. vi. ix.]* The words "entitled to possession of settled land for his life," as used in sub-sect. 5 of sect. 2 of the Settled Land Act, 1882, means entitled "in possession" as distinguished from entitled "in reversion," and the words in sub-sect. 6, "two or more persons so entitled as tenants in common, or as joint tenants," mean entitled "for life."

A testator devised real estate to the use of trustees in fee during the life of his son, on trust to receive the rents, and, after payment of costs and outgoings, to hold the residue of the rents upon the trusts thereafter mentioned. And after the death of the son, to the use of his first and other sons successively in tail male, with remainders over. And the testator directed that his trustees should during the life of the son pay and apply the residue of the rents which should during his life become payable to them in such manner in all respects as they should think best for the maintenance, or otherwise for the benefit of the son and of his wife and his child or children, or for the benefit of any one or more of them, and so that, in case the son should at any time assign, charge, or attempt to anticipate his interest under the will, or should do any act whereby, either directly or by operation of law, he would, if absolutely entitled to such interest, be deprived, or liable to be deprived, of the benefit or enjoyment thereof, then the trust thereinbefore declared in his favour should absolutely cease, and the rents should thenceforth during his life be applied by the trustees, either for the maintenance, support, or benefit of the son, or for such other purposes and in such manner in all respects as the trustees should in their absolute discretion think fit. There being no children of the son and he not having forfeited his interest under the will:—

*Held*, by Pearson, J., that he and his wife did not together constitute a tenant for life of the estate by virtue of sub-sect. 6 of sect. 2 of the Settled Land Act, 1882, and that they had not, by virtue of sect. 58, the powers of a tenant for life under the Act. *Re ATKINSON. ATKINSON v. BRUCE* 30 Ch. D. 605, 55 L. J. Ch. 49, 53 L. T. 258, [33 W. R. 899]

**SETTLED LAND ACTS—continued.**

13. — *Tenant for Life—Tenant for Years—Estate determinable with Lease—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58, sub-ss. 4, 6.* A testator who had granted a lease of a house for a term of thirty-one years from the 25th of March, 1859, at a rent of £50 a year, by his will, dated the 20th of June, 1866, devised his freehold interest in such house to trustees upon trust to permit his wife to receive the rent for her own benefit "during the remainder of the term granted by the said lease if she should so long live," and in case she should die "before the expiration of the term created by such lease," then he gave and devised the house to the children of his brother in fee, and he directed that if his wife should "happen to live after the expiration of the term created by such lease," then the trustees should sell the house, and out of the income from the investment of the proceeds pay £50 a year to his wife during her life, and subject thereto he gave the residue of the proceeds for his brother's children. The testator died in 1866, and the question being raised whether his widow could, under the Settled Land Act, 1882, accept a surrender of such lease and grant a new lease of the house for a term of twenty-one years from the 25th of December, 1883, at an increased rent:—

*Held*, affirming the decision of Pearson, J. (26 Ch. D. 428, 53 L. J. Ch. 574, 50 L. T. 530, 32 W. R. 701, 1884 Dig. col. 440), that the widow was not a person under sect. 58 of that Act entitled to the powers of a tenant for life, and was therefore not able to accept a surrender and make a new lease of the house. *Re HAZLE'S SETTLED ESTATES* [29 Ch. D. 78, 54 L. J. Ch. 628, 52 L. T. 947, [33 W. R. 759 (C.A.)]

14. — *Tenant for Life—Sale—Pendency of Administration Action.* The pendency of an action by tenant for life in which a decree has been made for execution of the trusts of a settlement, does not prevent him from exercising his power of sale under the Settled Land Act, 1882, without the sanction of the Court. *CARDIGAN v. CURZON-HOWE* 30 Ch. D. 531, 55 L. J. Ch. 71, [33 W. R. 836]

15. — *Tenant for Life—Leasing Powers under Settlement and under Act—Conflict of Powers—Settled Land Act, 1882, ss. 6, 56 (ii.).* *Re MANSEL'S SETTLED ESTATES* W. N. (1884) 209

16. — *Tenant for Life—Costs of Sale by Tenant for Life—Action to determine Questions as to Title—Costs of Mortgagees of Tenant for Life—Settled Land Act, 1882, s. 53.* *SEBRIGHT v. THORNTON* - - - W. N. (1885) 176

17. — *Tenant for Life—Power of Sale—Settled Land Act, 1882, s. 2 (v.) (vii.); s. 58, sub-s. 1 (vi.), (ix.).* *Re COOKES' SETTLED ESTATES.* *COOKES v. COOKES* - - - W. N. (1885) 177

18. — *Title of Dignity or Honour—Incorporeal Hereditament—Land—Heirlooms devolving with Dignity—Sale of Heirlooms—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-s. 10, ss. 37, 58—Statute De Donis (13 Ed. 1)—Statute Westminster Second.* A dignity or title of honour, as an incorporeal hereditament, is "land" within the meaning of the 37th section of the Settled Land Act, 1882.

**SETTLED LAND ACTS—continued.**

When a dignity is limited to the heirs of the body, then, although no place be named in the creation of the title, the dignity is within the statute *De Donis*, and descendible as an estate tail, and the patent does not create a fee simple conditional.

There is no difference in these respects between a baronetcy and other descendible dignities.

The resolution reported 12 Rep. 81, *held* to be overruled.

The Settled Land Act, 1882, does not enable a limited owner to sell any property which, when vested in a tenant in fee simple, is by law inalienable. *Re SIR J. RIVETT-CARNAC'S WILL*

[30 Ch. D. 138, 54 L. J. Ch. 1074, 53 L. T. 81, [33 W. R. 837]

— Married woman—Examination.

*See* SETTLED ESTATES ACTS. 3.

— Payment out—Investment—Purchase-money of lands taken compulsorily.

*See* LANDS CLAUSES ACT. 10.

**SETTLEMENT:—**

I. AFTER-ACQUIRED PROPERTY.

II. ARTICLES.

III. CONSTRUCTION.

IV. EQUITY TO A SETTLEMENT.

V. FORFEITURE CLAUSE.

VI. INVESTMENTS.

VII. MANAGEMENT.

VIII. POWERS.

IX. VALIDITY.

I. SETTLEMENT — AFTER-ACQUIRED PROPERTY—*Covenant to settle Property to which Wife or Husband in her right "shall become entitled."* In a settlement made before marriage there was an agreement to settle upon certain trusts all real and personal property to which the wife or the husband "in her right at any time during her now intended coverture shall become entitled (except jewels and "certain other articles "which it is hereby declared shall belong to" the wife "for her separate use.") The trusts included a power of sale, the moneys arising from the sale to be held upon the trusts agreed and declared concerning such part of the personal estate of or to which the wife "now is or she or" the husband "in her right shall become possessed or entitled as aforesaid":—*Held*, affirming the decision of the Court of Appeal, that on the true construction of the agreement, read in conjunction with the context, it included property to which the wife was entitled before marriage; and therefore that jewels given to the wife before marriage were within the exception and belonged to the wife for her separate use. *WILLIAMS v. MERCIER* - - - 10 App. Cas. 1, [54 L. J. Q. B. 148, 52 L. T. 662, 33 W. R. 373, [49 J. P. 484 (H. L., E.)]

2. — *Covenant—Judicial Separation, Decree for—"Feme Sole"*—20 & 21 Vict. c. 85, ss. 7, 21, 25, 26.] A married woman, subsequently to obtaining a decree of judicial separation from her husband, became absolutely entitled to certain sums of stock:—*Held*, by Bacon, V.C., that under 20 & 21 Vict. c. 85, s. 25, the stock belonged to her as if she were a *feme sole*, and was not included in a covenant

**SETTLEMENT—AFTER-ACQUIRED PROPERTY—continued.**

her marriage settlement to settle all property which she or her husband in her right might acquire during the coverture." *DAWES v. CREYKE*

[30 Ch. D. 500, 54 L. J. Ch. 1096, 53 L. T. 292, 33 W. R. 869]

3. — *Covenant to settle—Separate use—recitals.* By a marriage settlement, after a recital that it had been agreed that all personalty, except jewels, exceeding in value £200, which should, during coverture, be given or bequeathed to otherwise vested in the intended wife or the intended husband in her right, should be settled on the trusts therein contained, the husband, in further pursuance of the said recited agreement, and for the considerations therein before expressed, covenanted with the trustees of the settlement that in case the marriage should be solemnised, and any personalty (except jewels) exceeding in value £200, should, during coverture, be given or bequeathed or in any manner vested in the intended wife or husband in her right, he and she respectively, their personal representatives, would do and execute all such acts, deeds, &c., as should be necessary for vesting the same for all the right and interest of the intended wife or of the intended husband, as her husband, therein in the trustees, and that, in the meantime, the intended husband and wife respectively would hold the same upon the trusts thereinbefore contained. During coverture certain personalty devolved upon the wife for her separate use:—*Held*, by Kay, J., that the wife having executed the settlement, was bound by the covenant, and that her separate property was included therein. *Re DE ROS. HARDWICKE v. ILMOT* — 31 Ch. D. 81, 55 L. J. Ch. 73, 53 L. T. 524, 34 W. R. 36

4. — *Post-nuptial settlement—Restraint on anticipation—Election—Compensation—Married women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 19.* By a post-nuptial settlement, made in 1847, it was agreed, and the husband covenanted, that all future property of the wife (an infant) should be settled in trust for her for life for her separate use, without power of anticipation. In 1883 she became entitled, as one of the next-of-kin of a deceased testator, to a share of undisposed of personalty.

*Held*, by Chitty, J., (1) that by virtue of s. 5 of the above Act, the wife was entitled, as against the trustees of the settlement, to have the fund transferred to her.

*Re Stonor's Trusts* (24 Ch. D. 195, 52 L. J. Ch. 6, 48 L. T. 963, 32 W. R. 413) considered.

*Held*, (2) that, notwithstanding the restraint on anticipation, she was put to her election, so that, in her declining to bring the property into settlement, she was bound to make compensation out of her life interest under the settlement.

*Willoughby v. Middleton* (2 J. & H. 344, 31 L. J. Ch. 683, 6 L. T. 814, 10 W. R. 460) followed.

*Held*, (3) that she was not bound to submit her election to the discretion of the Court, but was herself entitled to elect. *Re QUEADE'S TRUSTS*

[54 L. J. Ch. 786, 53 L. T. 74, 33 W. R. 816, W. N. (1884) 225, W. N. (1885) 99]

5. — *Settlement of Realty on "the like trusts" with the Personalty—Next-of-kin—Whole and half*

**I. SETTLEMENT—AFTER-ACQUIRED PROPERTY—continued.**

*blood.*] By a marriage settlement £360, the property of the wife, was settled, after the deaths of husband and wife, and in default of appointment by the wife, upon the wife's next-of-kin "of her own blood and family in due course of distribution, the same as if she had died a *feme sole* and intestate possessed thereof or entitled thereto." The settlement contained a clause providing that after-acquired realty or personalty of the wife should be settled "upon and for the like trusts, intents, and purposes as were thereinbefore declared of and concerning the said principal sum of £360 thereby assigned."

The wife afterwards acquired realty and personalty, and died without having exercised the power of appointment, and the husband also died.

*Held*, by Pearson, J., that the wife's personalty passed to her next-of-kin according to the Statute of Distributions, the half-blood sharing equally with the whole blood; and that her realty passed to her heir-at-law. *BRIGG v. BRIGG* 54 L. J. Ch. 484, 52 L. T. 753, 33 W. R. 454, W. N. (1885) 42

**II. SETTLEMENT—ARTICLES—Power of appointment—Recitals in will—Hotchpot clause.**

By articles under seal, dated 25th October, 1830, executed on the marriage of J. R. M. and E. C. M., and not containing any hotchpot clause, two bonds for £1500 and £3000 respectively, and two policies of insurance for £1000 each, were assigned to trustees upon trust, after the death of the husband and wife, for the children of the marriage, as J. R. M. should appoint, and in default thereof as E. C. M. should appoint, and in default of any appointment in trust for the children equally. The parties to the marriage articles covenanted to execute a settlement in pursuance thereof. There was issue of the marriage six children. In 1856, by settlement on the marriage of M. T., one of the daughters, J. R. M. assigned to the trustees of that settlement one of the policies for £1000, the proceeds of which were, on the death of J. R. M. in 1862, paid to the trustees of the settlement. In 1860, on the marriage of M. S., another daughter, a settlement was executed to which J. R. M. was a party, reciting an agreement by J. R. M. to give to that daughter £1000, payable upon the death of J. R. M. and E. C. M.; and J. R. M. executed to the trustees of the settlement his bond for £1000. In 1862 S., a third daughter, married, when a sum of £1000, secured by the joint bond of J. R. M. and his father, was put in settlement. In 1864, on the marriage of a fourth daughter, E., a settlement was executed, to which E. C. M. was a party, reciting the articles of 1830, and that J. R. M. had died, leaving £3500 of the £6500 comprised in these articles unappointed; and E. C. M., in exercise of the power, appointed £1250 to E., which she assigned to her trustees. In 1865 one of the sons married, and by marriage settlement dated the 17th January, 1865, reciting the articles of 1830, and that £2250 remained unappointed, E. C. M. appointed £1000 to him. On the 5th March, 1873, E. C. M., by will, reciting that she had a disposing power over £1500, exclusive of the sums settled on her son and her three firstly married daughters, viz., M. T., M. S., and S., bequeathed £500 out of her own personal estate

**II. SETTLEMENT—ARTICLES—continued.**

and out of the £1500 to trustees for her grandson J. (son of M. T.), and the residue of the £1500 to trustees for her daughter M. T. for life, remainder to her children. By a codicil to her will, E. C. M. left one half of the residue of the £1500 to M. T. for life, remainder to her children, and the other half to M. S. for life, remainder to her children:—*Held*, that the settlements on the marriage of the daughters M. S. and S. were not good appointments, and were not validated by the recitals in E. C. M.'s will: that the will and codicil of E. C. M. were good appointments to M. T. and M. S. for life as to half of the residue to each, but void as to their children; that the articles were executory, and that the unappointed residue of the fund must be distributed as if the articles contained a hotch-pot clause. *Lees v. Lees* (1. R. 549) distinguished, having regard to the date of the articles. *MILLER v. GULSON* - - - 13 L. R. Ir. 408

**III. SETTLEMENT — CONSTRUCTION — Life Assurance Policy — Bonuses — How applied. HUGHES v. SEARLE - - - W. N. (1885) 79**

2. — *Money fund for younger children—Portions—Trusts of term to secure—Children other than and besides an eldest son.* By settlement executed on the marriage of F. with H. a sum of £1000, the fortune of the wife H., and £923 1s. 6d., the property of the husband, were vested in trustees in trust for F. for life, and after his decease, in case he survived his wife (which event happened) in trust to pay and assign said funds among his children other than *and* besides an eldest or only son, as he should appoint; and in default of appointment, then upon the trusts declared concerning the trust fund secured by the term of five hundred years for the benefit of F.'s younger children thereafter mentioned; but if there were no such child or children as those for whom said trust fund was to be provided, then in trust for F.'s father.

By the same settlement certain lands were conveyed to the use of F. for life; remainder, subject to a trust term of five hundred years, to the use of his first and other sons in tail male; remainder to the daughters, as tenants in common in tail, with remainders over. The trusts of the term of five hundred years were declared to be, that if there should be any child or children of the said F. other than *and* besides an eldest or only son who, by virtue of the limitations before mentioned, should, for the time being, be entitled to the lands, then that the trustees should raise for such child or children other than *or* besides an eldest or only son, as aforesaid, the sums mentioned—£6000 if one such child, £8000 if two, and £10,000 if three or more. There were two other clauses as to the vesting of these portions, which contained the words "other than *or* besides an eldest or only son so for the time being entitled as aforesaid," and an advancement clause which contained the words "other than *and* except an eldest or only son for the time being entitled as aforesaid."

There was issue of the marriage two daughters only, both of whom died in F.'s lifetime, leaving children who became entitled on F.'s death to the settled lands:—

*Held*, first, that the clauses in the settlement dealing with the money fund must be read as pro-

**III. SETTLEMENT—CONSTRUCTION—contd.**

viding for children other than *and* besides an eldest or only son.

Secondly, that there not being any son of the marriage, the daughters did not come within the description of "a child or children other than and besides an eldest or only son," and that consequently the money fund of £1923 1s. 6d. passed to F.'s father under the ultimate trust. *Re FLEMING'S TRUSTS* - - - 15 L. R. Ir. 363

3. — *Portions—Vesting—Satisfaction.* A sum of £2000, secured by the bond of J. M., the father of the intended wife, was, by a marriage settlement in 1849, vested in trustees upon trust for her separate use for life, and after her decease in trust for all and every, or such one or more exclusive of the other or others, of the issue of the said intended marriage, whether a son or sons, daughter or daughters, or more remote descendant or descendants, if more than one, in such shares, &c., as the wife should appoint; but so, nevertheless, that no share in the said trust funds shall be absolutely vested in any child or any issue by any such appointment until he, being a male, shall attain the age of twenty-one years, or until she, being a daughter, shall attain that age or marry; and in default of appointment, in trust for all and every the children or child of the marriage who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, to be divided between and among them, if more than one, in equal shares; and if there shall be but one such child, the whole in trust for such only child. Provided, however, that if any child or children of the said intended marriage shall die in the lifetime of the said G. H. (the husband) and M. M. (the wife), or the survivor of them, leaving issue, such issue shall stand and be in the place of his or their parent or parents, and shall be entitled to such share of the said trust moneys as the parent or parents would have been entitled to, in case of surviving the said G. H. and M. M., and attaining twenty-one years. The deed contained provisions for maintenance and advancement. M. M. (the wife) died, leaving her husband and several children surviving her, one of whom, a daughter (A. H.), attained twenty-one, and married in 1873, after her mother's death:—

*Held*, that the portion secured by the settlement of 1849 vested in the children of the marriage of G. H. and M. M. at twenty-one or marriage. *MARTIN v. DALE* - - - 15 L. R. Ir. 345

4. — *Trust for Sale—Trust exercisable without consent of Cestui que Trust.* Real property was vested in trustees upon trust at the request of A. and B. and the survivor, and after their death at discretion, to sell and hold the proceeds upon trust for A. and B. successively for life, and then for the children equally. After the deaths of A. and B. there were three adult children:—

*Held*, by Pearson J., that the trust for sale was not spent, but was exercisable by the trustees without the concurrence of the beneficiaries. *Re TWEEDIE AND MILES* 27 Ch. D. 315, 54 L. J. Ch. [71, 33 W. R. 133]

5. — *Vested Interest—"Payable" meaning "vested"—Shares "to be paid" at twenty-one—Gift over on Death before Share "payable."* By a marriage settlement lands were conveyed upon

**III. SETTLEMENT—CONSTRUCTION—contd.**

trust for husband and wife successively for life, and after the death of the survivor "to levy out of the said lands and premises . . . the sum of £3,000 . . . to be divided to and among all the children of the said intended marriage, save and except such child and children as under the limitations aforesaid shall succeed to the enjoyment of the lands and premises hereby conveyed . . . in equal shares and proportions as tenants in common and not as joint tenants, the share of such child or children as shall be a son or sons to be paid to him or them upon his or their respectively arriving at the full age of twenty-one years, and the share or shares of such of them as shall be daughters to be paid upon their respectively arriving at their full age of twenty-one years, or day or days of marriage, whichever shall first happen: Provided always that such marriage during minority shall be had by and with the consent and approbation of" the parents "or the survivor of them: with interest for the same by way of maintenance at the rate of £6 by the hundred to be computed from the day of the death of the survivor of" the parents: "with benefit of survivorship to the survivors or survivor of such children if any of such children shall die before his, her, or their share or shares shall become payable unmarried and without leaving issue as aforesaid, it being the true intent and meaning of these presents that none of the children of the said intended marriage, who under the limitations herein contained shall become entitled to an estate in possession in any part of the lands and premises hereby conveyed . . . shall be entitled to any part of" the said sum.

A son attained twenty-one and died in the lifetime of his father:—*Held*, affirming the decision of the Court of Appeal in Ireland (13 L. R. Ir. 17), that there being no words indicating a clear intention to make the vesting of children's shares contingent on their surviving both parents, the rule laid down in *Emperor v. Rolfe* (1 Ves. Sen. 208) applied, and the son took a vested interest in his share on attaining twenty-one. *WAKEFIELD v. MAFFET* - 10 App. Cas. 422, 55 L. J. Ch. 4, [53 L. T. 169, 15 L. R. Ir. 218 (H. L., Ir.)]

6. — "Without having been married." By a marriage settlement funds were vested in trustees for the intended wife and husband successively, for their lives, and after their deaths for the children of the marriage, as the husband and wife during their joint lives, or the survivor should appoint; and, in default of appointment, for the children equally, or for one child if only one, the shares to vest in sons at twenty-one, and in daughters at twenty-one or marriage; on failure of issue who should acquire a vested share as the wife should, notwithstanding her coverture, by deed or will appoint: and in default of such appointment, and so far as the same should not extend, then as the husband should by deed or will appoint; and in default of appointment by him, for such person or persons as, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the decease of the wife, if she had died possessed thereof intestate, and *without having been married*, with a power to the trustees after the death of the husband, or during his life, with his consent to advance one-half of the respective shares of the

**III. SETTLEMENT—CONSTRUCTION—contd.**

sons towards placing them out in any business, employment, or advancement in the world. There were two children of the marriage who died infants. The wife survived the husband, married again, and had by her second marriage one son (the Plaintiff), and died intestate without making any appointment of the fund, leaving the second husband (her administrator) surviving:—*Held*, that the next of kin of the wife, excluding the Plaintiff, were entitled to the funds.

*Wilson v. Atkinson* (33 Beav. 536, 4 D. J. & S. 455); *In re Ball's Trust* (11 Ch. D. 270, 48 L. J. Ch. 279, 40 L. T. 880, 27 W. R. 409), and *Upton v. Brown* (12 Ch. D. 872, 48 L. J. Ch. 756, 41 L. T. 340, 28 W. R. 38) reviewed and considered. *HARDMAN v. MAFFET* - 13 L. R. Ir. 499

— Advowson—"Situate in parish of D."

See ADVOWSON. 2.

**IV.—SETTLEMENT.—EQUITY TO A SETTLEMENT—Settlement of Whole Fund.]**

A husband entitled to leaseholds in right of his wife, deserted her and their children, and for eight years contributed nothing towards her or their support, except the rents of the leaseholds. During the desertion the leaseholds were sold by the wife for £250 to a purchaser, who expended the greater part of the proceeds upon the maintenance of the wife and children.

In an action by the husband against the wife and the purchaser to set aside the sale and recover the leaseholds or the proceeds:—

*Held*, by Kay, J., that, under her equity to a settlement, the wife was entitled to have the entire proceeds of the sale secured to herself, and such proceeds having practically been expended for her benefit, the action must be dismissed with costs. *BOXALL v. BOXALL* - 27 Ch. D. 220, [53 L. J. Ch. 838, 51 L. T. 771, 32 W. R. 896]

2. — *Wife's Real Estate—Sale by Wife—Non-concurrence of Husband—Fines and Recoveries Act, 1833* (3 & 4 Will. 4, c. 74), s. 91—*Husband's Interest in Rents and Profits—Judicature Act, 1873*, s. 25, sub-s. 11.] An order in the usual form obtained under sect. 91 of the Fines and Recoveries Act, 1833, by a married woman, empowering her to dispose of her real estate without the concurrence of her husband, does not deprive him of the common law rights which he acquired in the property by reason of the coverture.

Where, therefore, under such an order, a married woman sold and conveyed all her estate and interest in real estate, her husband refusing to join:—

*Held*, by North, J., that the husband's common law right to the rents during the coverture remained unaffected by the wife's alienation, but that (she asserting her equity to a settlement) he was bound, whether his estate was legal or equitable, to provide for her out of the rents; and, under the circumstances, the whole of the rents were settled upon her. *FOWKE v. DRAYCOTT* 29 Ch. D. 996, [54 L. J. Ch. 977, 52 L. T. 890, 33 W. R. 701]

**V.—SETTLEMENT—FORFEITURE CLAUSE—**

*Insolvency—Bankruptcy Act, 1869*, s. 126—*Composition.*] Presentation by a firm of a petition for liquidation under the Bankruptcy Act, 1869, followed by acceptance by the creditors of a composition, operates as a forfeiture of an interest limited in 1862 to the use of A., who was a member of the

**V. SETTLEMENT—FORFEITURE CLAUSE—**  
*continued.*

firm, during his life, "or until he should be outlawed or declared bankrupt, or become an insolvent within the meaning of some Act of Parliament for the relief of insolvent debtors." *NIXON v. VERRY*

[29 Ch. D. 196, 54 L. J. Ch. 736, 53 L. T. 18,  
[33 W. R. 633]

2. — *Life Estate—Bankruptcy—Discharge of Bankrupt—Re-assignment of Estate.*] Under the trusts of a marriage settlement a life interest in property brought into settlement by the wife was given, after her death, to the husband, but the trust in his favour was to cease in the event of his bankruptcy or liquidation, and there was a gift over on that event. In August, 1881, he filed a liquidation petition under which, in October, 1881, a trustee of his property was appointed. In January, 1883, he obtained a discharge. In April, 1884, the wife died. In March, 1885, the trustee assigned for value to the debtor all the property belonging to him at the commencement of the liquidation and devolving on him subsequently, up to the date of the discharge, other than that which had been already received by the trustee. The liquidation was never formally closed, but the trustee had never made any claim to the income of the settled fund :—

*Held*, by Pearson, J., that, inasmuch as, before the re-assignment by the trustee to the debtor, income had become due to him, which, but for the forfeiture clause, the trustee might have received, the forfeiture had taken effect.

*White v. Chitty* (Law Rep. 1 Eq. 372, 14 W. R. 366), *Lloyd v. Lloyd* (Law Rep. 2 Eq. 722), and *Ancona v. Waddell* (10 Ch. D. 157, 27 W. R. 186), distinguished. *ROBERTSON v. RICHARDSON*

[30 Ch. D. 623, 33 W. R. 897]

3. — *Life interest—Forfeiture on alienation—Subsequent settlement of life interest.*] L. was entitled under a voluntary settlement to a life interest in one-fourth part of certain funds, with remainder to his children who should attain twenty-one, or die under that age leaving issue, with remainder over. The settlement contained a proviso for the determination of his life interest, and the acceleration of the subsequent remainders, if he should alien, dispose of, mortgage, charge, or in anywise incur his life interest, or if by reason of his bankruptcy, insolvency, or otherwise the income of the funds could be no longer personally enjoyed by him, but would, but for that proviso, become vested in, or payable to, any person or persons other than him.

By a subsequent settlement made on his marriage, L., amongst other property, assigned to trustees the share to which he was entitled under the former settlement, upon trust to continue the trust funds in their then present investments, or upon the written request of L., and after his death upon such request, or at such discretion as therein mentioned, to sell the same, and pay the income of the proceeds to L. during his life, and after his death, to his wife during her life, with remainder for the issue of the marriage as L. and his wife jointly, or the survivor, should appoint, and in default for all the children of the marriage, in equal shares, sons at twenty-one, daughters at twenty-one or marriage, and in default of such issue for L. absolutely.

**V. SETTLEMENT—FORFEITURE CLAUSE—**  
*continued.*

The question arose whether the marriage settlement produced a forfeiture of L.'s life interest under the voluntary settlement.

*Held*, by Kay, J., that no such forfeiture was produced, for the assignment contemplated by the forfeiture clause was one by reason of which the income of L.'s share would become payable to some person other than him, whereas by the marriage settlement the life interest was assigned to trustees for his benefit. *LOCKWOOD v. SIKES* 51 L. T. 562

4. — *Settlement of Real Estate for Life and in Remainder—Insolvency in New South Wales—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 74.*] In 1838 a settlement of real estate in England was made, and thereby the trustees were to pay the rents and profits to S. L. for life or until he should commit an act of bankruptcy, or commit any act, or any event should occur, whereby the rents, if settled absolutely upon or in trust for him, should be forfeited to or become vested in any other person whomsoever, and there was a gift over upon the happening of any such event. S. L. in 1875 was residing in New South Wales, and was adjudged insolvent by the Court of the colony, the Act of the colony vesting all property of the insolvent "whosoever the same might be known or found" in the commissioner therein mentioned. On summons taken out by S. L. under the Settled Land Act of 1882, to have trustees appointed :—

*Held*, by Kay, J., that in consequence of the insolvency in New South Wales, the property had become forfeited and had gone over to those in remainder. *Re LEVY'S TRUSTS* 30 Ch. D. 119,

[54 L. J. Ch. 968, 53 L. T. 200, 33 W. R. 895]

**VI. SETTLEMENT — INVESTMENTS — Investment of Personal Estate to cultivate Real Estate.**

The trustees of real and residuary personal estate devised and bequeathed in trust for A. for life, with remainder to his children, who were infants (there being no investment clause in the will), were authorized to advance to the tenant for life part of the residuary personal estate for the purpose of stocking and cultivating a farm forming part of the real estate, on evidence that the outlay would be to the advantage of the infant remaindermen. *Re HOUSEHOLD. HOUSEHOLD v. HOUSEHOLD* 27 Ch. D. 553,

[54 L. J. Ch. 157, 51 L. T. 319]

— Unauthorized—Trustee's costs.

*See* TRUSTEE—COSTS AND CHARGES. 3.

**VII. SETTLEMENT — MANAGEMENT — Settlement of Business on Trust for Successive Tenants for Life—Loss during First Tenancy for Life—Profit during Second Tenancy for Life—Apportionment of Loss between Persons interested.**

[In an action to execute the trusts of a settlement, by which (*inter alia*) a business was assigned to trustees on trust for successive tenants for life and remaindermen, a receiver and manager was appointed to carry on the business. During the life of the first tenant for life the business was carried on by the receiver at a loss; during the life of the second tenant for life profits were earned :—

*Held*, by Pearson, J., that the loss must be made good out of the subsequent profits, and not out of capital. *UPTON v. BROWN* 28 Ch. D. 588,

[54 L. J. Ch. 614, 51 L. T. 591, 32 W. R. 679]

**VII. SETTLEMENT—MANAGEMENT—cont.**

2. — *Windfalls—Larch Trees—Tenant for Life.*] An estate which comprised larch plantations was settled as personality by the medium of trustees for sale. The trustees had power to pay all outgoings, and to determine what part of the property was *corpus* and what income. A large number of trees were blown down by extraordinary gales, and the plantations were so much injured that it became necessary to clear and replant the ground.

The income from the plantations was derived from thinnings, and varied considerably according to the age of the trees. The trees blown down were about thirty-five years old, and in ordinary course would have come to full maturity in fifteen or twenty years, and they would then have been cut down and the ground cleared and replanted.

*Held*, that the proceeds of the sale of the larch trees blown down and felled by reason of the gales did not belong to the equitable tenant for life, but must be invested by the trustees. But the Court, having regard to the average income which would have been derived from the plantations if no gales had occurred, fixed an annual sum to be paid to the tenant for life out of the income, and, if necessary, the capital of the invested fund; subject to the right of the trustees to have recourse to the fund in order to replant the plantations. *Re HARRISON'S TRUSTS, HARRISON v. HARRISON* 28 Ch. D. 220, 54 L. J. Ch. 26, [617; 52 L. T. 204, 33 W. R. 240 (C.A.)]

3. — *Windfalls—Larch Trees—Real and Personal Estate—Tenant for Life.*] A testator devised estates upon which there were plantations of larch trees. At the time of his death a great number of the larch trees had been more or less blown down by extraordinary gales.

It was *held* by Pearson, J. (28 Ch. D. 89, 54 L. J. Ch. 5, 33 W. R. 195), that as between the devisees and the executors of the testator the trees which had been blown down to such an extent that they could not grow as trees usually grow were severed and belonged to the executors, and that the trees which were merely lifted but would have to be cut for the proper cultivation of the plantations belonged to the devisees:—

But, *held*, by the Court of Appeal, in allowing an appeal, that, having regard to the maxim "*quicquid plantatur solo, solo cedit*," the principal applicable was that if a tree was attached to the soil it was real estate, and if severed, personality; that the life and manner of growth of any particular tree was no test of its attachment to the soil, and that the degree of attachment or severance was a question of fact in the case of each particular tree. *Re AINSLIE. SWINBURN v. AINSLIE* 30 Ch. D. 485, [33 W. R. 910 (C.A.)]

**VIII. SETTLEMENT—POWERS—Power of Sale—Extinguishment—Disentailing Deed.**] An estate was devised to uses to secure certain annuities, and subject thereto in strict settlement, with power for trustees to sell at the request of the tenant for life under the will. The estate was disentailed and re-settled (the existing life estate being postponed to certain charges and the powers of the will being expressed to be kept alive):—

*Held*, by Pearson, J., that the trustees for sale and the tenant for life could make a good title. *Re WRIGHT'S TRUSTEES AND MARSHALL* 28 Ch. D. [93, 54 L. J. Ch. 60, 51 L. T. 781, 33 W. R. 304]

**VIII. SETTLEMENT—POWERS—continued.**

— Leasing powers under settlement and under Settled Land Act.

See SETTLED LAND ACT. 15.

**IX. SETTLEMENT—VALIDITY—Setting aside—Misrepresentation—Marriage—O. XXV. r. 4.**] The statement of claim in an action to set aside a marriage settlement alleged that, previous to the execution of the settlement made in contemplation of the marriage between the Plaintiff and the Defendant, the latter stated to him that her first husband had been divorced from her, and at her suit, by reason of his adultery and cruelty, and that she herself had not been guilty of adultery; that the Plaintiff relying on such representations executed the settlement and married the Defendant: that such representations were entirely false to the Defendant's knowledge, and that the divorce from her first husband had been obtained at his suit and by reason of her adultery. *Held*, affirming the decision of Pearson, J. (53 L. J. Ch. 1014, 51 L. T. 537, 32 W. R. 1016, 1884 Dig., col. 533), that the claim shewed no reasonable ground of action, and must be struck out under O. XXV. r. 4. *JOHNSTON v. JOHNSTON* - 52 L. T. 76, 33 W. R. 239 (C.A.)

**SETTLEMENT.**

See also SETTLED ESTATES ACTS,  
SETTLED LAND ACTS,  
TRUSTEE,  
TRUSTEE ACTS,  
TRUSTEE RELIEF ACTS,

— Ante-nuptial parol agreement to settle—Part performance.

See HUSBAND AND WIFE—WIFE'S PROPERTY. 2.

— Covenant to pay sum of money during life or after death—Succession duty.

See REVENUE. 13.

— Election—Married Woman.

See ELECTION. 2, 3.

— Infant—Married woman—Joint tenancy—Severance.

See JOINT TENANT.

— Made abroad—Wife's separate property in possession of husband.

See BANKRUPTCY—ORDER AND DISPOSITION. 4.

— Protector of.

See TENANT IN TAIL. 1.

— Variation by Court.

See PRACTICE—DIVORCE. 11, 12.

— Void against creditors—13 Eliz. c. 5.

See FRAUDULENT CONVEYANCE.

— Void against purchasers—27 Eliz. c. 4.

See VOLUNTARY CONVEYANCE.

**SETTLEMENT OF PAUPER.**

See POOR LAW. 3—5.

**SEWERS** — *Commissioners of — Prescription, Liability by, of Frontager to repair Sea Wall—Extraordinary violence of the Sea—Act of God—Sewers, Commissioners of, Order by, to repair Sea Wall, Effect of—Land Drainage Act, 1861 (24 & 25 Vict. c. 133, s. 33—Disqualification of Commissioners by reason of Interest—23 Hen. 8, c. 5; 13 Eliz. c. 9]* The extent of the liability of a frontager to repair a sea wall, whether arising by tenure, pre-

**SEWERS—continued.**

scription, or custom, can only be ascertained by usage.

—J. A. was a frontager in a level on the Essex shore of the Thames under the jurisdiction of Commissioners of Sewers. An ancient sea wall protected the level against incursions of the sea. There was evidence proving a prescriptive liability on the part of the frontagers in the level to maintain and repair this sea wall. A portion of the sea wall in front of J. A.'s land was destroyed by an extraordinary storm and high tide. The wall was previously in good repair, and in a proper condition to resist the ordinary action of the sea:—*Held*, on the authority of *Keighley's Case* (10 Rep. 139) and *R. v. Commissioners of Sewers for Somerset* (8 T. R. 312), that, in the absence of evidence sufficient to shew that the prescriptive liability of the frontagers extended to the repair of damage occasioned by extraordinary violence of the sea, J. A. was not liable to repair the damage thus occasioned to the wall at his own expense, but the expense of so doing must fall on the whole of the level. *Bv s. 33 of the Land Drainage Act, 1861* (24 & 25 Vict. c. 133), it is provided that commissioners of sewers acting within their jurisdiction may, without the presentment of a jury, make any order in respect of the execution of any work, the levying of any rate, or doing any act which they might but for this section have made with such presentment, subject to a proviso that any person aggrieved by any such order may appeal therefrom to the quarter sessions.—Orders were made by the Commissioners of Sewers upon J. A. to execute repairs to the sea wall rendered necessary by the aforesaid extraordinary storm and high tide. Among the commissioners making the orders were two persons who were interested in lands in the level, liable to be rated to a general rate.—*Held*, by the Queen's Bench Division (53 L. J. M. C. 113, 51 L. T. 227, 48 J. P. 789, 1884 Dig., col. 451), that these orders had by virtue of the above-mentioned section the same effect as if made on the presentment of a jury, and that therefore so long as they stood they had the effect of adjudications against J. A., rendering him liable to do such repairs to the wall:—But *held* also, by the Queen's Bench Division and the Court of Appeal, that such orders must be quashed on certiorari on the ground that two of the commissioners making them were interested parties. *REG. v. COMMISSIONERS OF SEWERS FOR ESSEX (FOBING LEVEL)* 14 Q. B. D. 561, 54 L. J. M. C. 89, [52 L. T. 587, 33 W. R. 650, 49 J. P. 404 (C. A.)]

— Access to, Right of—Injurious affecting—Compensation.

See LANDS CLAUSES ACT. 4.

— Commissioners of—Power to take land.

See METROPOLIS. 1.

— Expenses of, laid in disturnpiked road—Adjoining owners.

See METROPOLIS. 3.

— Power to make branch drains to.

See METROPOLIS. 7.

— Public Health Acts.

See PUBLIC HEALTH ACTS. 3, 5, 15, 16.

**SHARES.**

See COMPANY—SHARES.

**SHERIFF—Action against.]** A sheriff is not liable for damage to goods which he has seized under a

**SHERIFF—continued.**

*fi. fa.* caused by a mob breaking in and injuring the goods, if he has used reasonable care and diligence in protecting them.

*Semble*, if a sheriff is let into possession of goods of which a receiver, appointed by the Court of Bankruptcy, is already in possession, he will not be liable in damages for not protecting the goods against third parties. *WILLIS, WINDER & Co. v. COMBE* - - - - 1 C. & E. 353

2. — *Fieri facias—Fees—Sale under fi. fa. partially abortive—Part only of goods taken in execution sold before bankruptcy—Removal to public salerooms—Expenses of removal and hire of salerooms.]* A writ of *fi. fa.* for £283 was delivered to a sheriff, under which he seized several musical instruments at the warehouse of P., the execution debtor, who was a pianoforte seller; and, without receiving any directions from either P. or the execution creditor, but, acting on his own responsibility, the sheriff, without, as the court considered, sufficient grounds for so doing, removed the goods from P.'s premises to a sale mart situate close by, where a small part of them was sold by auction for £62, and in consequence of the insufficient bidding the sale of the remainder was adjourned. P. was adjudicated a bankrupt before the day to which the sale stood adjourned. The sheriff claimed, as against P.'s assignees in bankruptcy, to retain out of the proceeds of the sale in his hands, fees on the entire sum for which the execution was issued, together with the expenses of removing the goods to the sale mart, and the hire of the mart:—*Held*, that the sheriff was only entitled to retain fees on the amount actually levied, and that the residue of his claim must be disallowed.

*Semble*, that the sheriff acted improvidently in removing the goods for sale from P.'s establishment without his assent, or other sufficient grounds. *RE PURCELL* - - - - 13 L. R. Ir. 489

3. — *Interpleader by Sheriff—Fi. fa.—Order LVII., r. 1 (b)—Proceeds or Value of Goods taken in Execution—Money paid to Sheriff under Protest—Trespass on Land of Person other than Execution Debtor—Protection to Sheriff against action for Trespass.]* Where the sheriff seized goods under a *fi. fa.* and a person other than the person against whom the process issued claimed the goods and paid out the sheriff under protest:—*Held*, that the money so paid to the sheriff under protest was the proceeds of goods taken in execution within the meaning of Order LVII. rule 1 (b), and that therefore the sheriff was entitled to interplead in respect thereof.—By the Court,—Where the sheriff in the execution of a *fi. fa.* enters the premises of a person other than the execution debtor and there seizes goods, believing erroneously that such goods belong to the execution debtor, the sheriff may, upon interpleader proceedings, be protected against an action for trespass to the land as well as against an action for seizure of the goods, if no substantial grievance has been done to the person whose premises are wrongfully entered.—*Hollier v. Laurie* (3 C. B. 334) discussed, and *Winter v. Bartholomew* (11 Ex. 704; 25 L. J. (Ex.) 62) approved. *SMITH v. CRITCHFIELD AND JENNER* 14 Q. B. D. 873, [54 L. J. Q. B. 366, 33 W. R. 920 (C. A.)]

4. — *Sale by—Execution Creditors—Writs of fi. fa. for more and for less than £20—Sale—*



**SHERIFF—continued.**

*Notice to Sheriff of Bankruptcy Petition—Title of Trustee—Bankruptcy Act, 1883, ss. 45, 46.]* Where the sheriff sells under an execution for more than £20, and within fourteen days afterwards receives notice of a bankruptcy petition, the effect of s. 46, sub-s. 2, of the Bankruptcy Act, 1883, is not to render the sale absolutely void, but to deprive the execution creditor of the fruits of the sale, and to transfer them to the trustee in the bankruptcy for the benefit of the general body of the creditors.—Where, therefore, a sheriff is in possession under several writs, some for more and some for less than £20, and proceeds to sell, the writs are payable in order of priority so long as there are funds to pay; but if he receives notice of a bankruptcy petition within fourteen days after the sale, only those writs are entitled to be paid which are for less than £20, and which would have been paid had not bankruptcy supervened. *Ex parte CROSTHWAITE* (or CROSTHWAITE). *Re PEARCE* .. 14 Q.B.D. 938, [54 L. J. Q. B. 316, 52 L. T. 518, 33 W. R. 614]

5. — *Sale under Execution—Notice to Sheriff of Bankruptcy Petition against or by Debtor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 46 (2), 168.]* The notice of a bankruptcy petition mentioned in sub-s. 2 of s. 46 of the Bankruptcy Act, 1883, must be served on the sheriff or his recognised agent (such as the under-sheriff), for the purpose of receiving such notices: it is not sufficient to serve it upon an ordinary bailiff or man in possession.—The effect of the provision of s. 168 that “sheriff includes any officer charged with the execution of a writ or other process,” is to bring within s. 46 officers of inferior courts who discharge for those courts duties similar to those which the sheriff discharges for the High Court.—On F., the serjeant-at-mace of the Mayor’s Court of London, proceeding to execute a warrant issued to enforce a judgment for more than £20, obtained in that court, he found H., an officer of the sheriffs of London, in possession of the goods of the debtor under a writ issued by the Queen’s Bench Division, and thereupon, in accordance with the usual practice, he delivered the warrant to H. for execution. H. sold the goods, and out of the proceeds paid the amount of the warrant to F. The next day notice was served on H. of a bankruptcy petition having been presented against the debtor on which he was afterwards adjudged bankrupt. No notice of the petition was served on F.:—*Held*, by Cave, J., that, by virtue of s. 168, H. must under the circumstances be deemed to be “the sheriff” for the purposes of s. 46, sub-sec. 2; and that therefore the trustee in the bankruptcy was, as against the execution creditor, entitled to the money.—*Held*, by the Court of Appeal, that, even if an effectual notice could ever have been served on H., a notice served on him after he had handed over the money to F. and his agency for F. had thus been determined, was ineffectual, and that consequently the execution creditor was entitled to the proceeds of sale. *Ex parte WARREN. Ex parte NICHOLS. Re HOLLAND* [15 Q. B. D. 48, 54 L. J. Q. B. 320, 53 L. T. 68, [33 W. R. 459, 572 (C.A.)]

— Interpleader.

See PRACTICE—INTERPLEADER.

— Notice to, of bankruptcy petition.

See BANKRUPTCY—PETITION. 3.

**SHIP:—**

- I. BILL OF LADING.
- II. BOTTOMRY.
- III. CHARTERPARTY.
- IV. COLLISION.
- V. DEMURRAGE.
- VI. FREIGHT.
- VII. GENERAL AVERAGE.
- VIII. HARBOUR COMMISSIONERS.
- IX. MASTER.
- X. MERCHANT SHIPPING ACTS.
- XI. NECESSARIES.
- XII. OWNERS.
- XIII. SALVAGE.
- XIV. WAGES.

**I. SHIP—BILL OF LADING—Construction—Custom.]** A bill of lading stipulated (*inter alia*) that the merchandise shipped thereunder was to be received on the quay at London, and delivered therefrom by the person appointed by the steamship’s agents, &c., the merchandise to be received and delivered “according to the customs and wages of the respective ports.”

A custom was proved with regard to grain cargoes coming to London, that if the merchant does not demand delivery of the grain within twenty-four hours after the ship’s arrival, the ship is entitled to discharge the goods on the quay. The merchant did not demand delivery of the cargo within the twenty-four hours, and it was landed on the quay. *Held*, by Huddleston, B., that, notwithstanding the custom, the shipowners were bound to pay the expenses incurred in weighing out the cargo, and the quay rates. *ASTE, SON, AND KEROHEVAL v. STUMORE, WESTON AND CO.* 1 C. & E. 319

[N. B.—The Court of Appeal reversed the above decision, holding that the custom was not inconsistent with the terms of the bill of lading, *ib. p. 321.*]

2. — *Construction—“Extra Steamer.”* A company owned a line of steamers called the “Monarch Line,” running between New York and London. A. was in the habit of shipping goods on steamers running on this line. A. shipped goods on a steamer at New York, and received a bill of lading made out in the ordinary form given by the company for goods shipped on their steamers, save that it had the words “extra steamer,” added after the words “Monarch Line of Steamships.” At London an overside release for the goods was signed and given by the company’s agent to A., and the freight received by them from A.

*Held*, in an action by A. against the company for non-delivery of the goods, that the company were estopped from saying that the contract of shipment was not made with them. *HERMAN v. ROYAL EXCHANGE SHIPPING CO.* — 1 C. & E. 413

3. — *Exception of Jettison and Stranding—Deck cargo carried at shipowner’s risk—Liability for jettison—Evidence of trade usage.]* Certain bales of cotton were shipped on board the defendant’s steamship under bills of lading which, among other risks, excepted jettison and stranding. Some of the bales were stowed on deck, and on the ship taking the ground they were jettisoned. It was admitted that the jettison was proper, and that there was a frequent practice to carry cotton on

**I. SHIP—BILL OF LADING—continued.**

deck at shipowner's risk:—*Held*, that the defendants had failed to prove such an universal practice that the plaintiffs must be taken to have been aware of it; and therefore that, it not being an implied term of the contract that the cotton might be stowed on deck, the defendants were liable under the bill of lading for their failure to deliver. *NEWALL v. ROYAL EXCHANGE SHIPPING CO.*

[33 W. R. 342, 868 (C.A.)]

4. — *Indorsee of Bill of Lading—“Passing of Property” in Goods shipped—Indorsement by way of Pledge—Bills of Lading Act (18 & 19 Vict. c. 111, s. 1.)* The mere indorsement and delivery of a bill of lading by way of pledge for a loan does not pass “the property in the goods” to the indorsee, so as to transfer to him all liabilities in respect of the goods within the meaning of the Bills of Lading Act (18 & 19 Vict. c. 111), s. 1.

Goods were shipped to a foreign port under bills of lading making the goods deliverable to the shipper or assigns. After the goods had arrived and been warehoused the shipper indorsed the bills of lading in blank and deposited them with the indorsees as security for a loan. The indorsees never took possession of or dealt with the goods.

*Held*, reversing the judgment of the Court of Appeal (13 Q. B. D. 159, 53 L. J. Q. B. 399, 51 L. T. 453, 32 W. R. 740, 5 Asp. M. C. 298, 1884 Dig. col. 456), and restoring the judgment of Field, J. (10 Q. B. D., 363, 52 L. J. Q. B. 428, 48 L. T. 705, 31 W. R. 796, 5 Asp. M. C. 79, 1883 Dig., col. 387), that “the property” in the goods did not “pass” to the indorsees within the meaning of the Bills of Lading Act so as to make them liable in an action by the shipowner for the freight. *SEWELL v. BURDICK*

10 App. Cas. 74, 54 L. J. Q. B. 156,

[52 L. T. 445, 33 W. R. 461, 5 Asp. M. C. 376 (H. L., E.)]

— Exceptions—“Dangers and Accidents of the sea.”

See SHIP—SALVAGE. 3.

— Incorporation of charterparty in—Lien.

See SHIP—CHARTERPARTY. 1.

**II. SHIP—BOTTOMRY—Necessity—Reference to Registrar and Merchants.]** To constitute a valid bottomry bond the money must be required for the necessities of the ship, and the authority of the master to borrow money on bottomry is based on such necessity. Reasonable inquiries by a lender may be evidence of his *bona fides*, but will not make a bond valid in respect of the several items for which it is given to the full extent of such items unless they are actually and entirely necessary:—*Held*, therefore, by the Court of Appeal; that the decision of Butt, J. (9 P. D. 102, 53 L. J. P. 44, 51 L. T. 268, 32 W. R. 799, 5 Asp. M. C. 284), was right, whereby he upheld the finding of the registrar and merchants who reduced the amount payable under a bond given by the master to a banker at St. Michaels, in respect of the charges for goods supplied, commissions, and premiums. *The “Prince of Saxe Coburg”* (3 Moo. P. C. 1) explained. *THE “PONTIDA”*

9 F. D. 177,

[53 L. J. P. 78, 51 L. T. 849, 33 W. R. 38,

[5 Asp. M. C. 330 (C.A.)]

— Foreign vessel.

See SHIP—NECESSARIES.

**III. SHIP—CHARTERPARTY—Bill of Lading—Freight—Incorporation of Conditions of Charterparty in Bill of Lading—Lien.]** A charterparty contained a stipulation in the usual form for payment of freight at the rate of £1 11s. 3d. per ton; it also contained a clause that the shipowner should have “an absolute lien on the cargo for freight, dead freight, demurrage, lighterage at port of discharge, and average;” and a further clause that the captain was to sign bills of lading at any rate of freight; “but should the total freight as per bills of lading be under the amount estimated to be earned by this charter, the captain to demand payment of any difference in advance.” Certain goods were put on board the chartered ship, and were made deliverable to the plaintiffs (who were not the charterers) by a bill of lading, whereby freight was made payable at 22s. 6d. per ton; the bill of lading contained also a clause, whereby it was provided that extra expenses should be borne by the receivers and “other conditions as per charterparty.” Upon the arrival of the ship at the port of discharge the defendant, who was the shipowner, claimed and compelled payment of freight at the rate mentioned in the charterparty. The plaintiffs having sued to recover back the difference between the freight as specified in the charterparty and the freight as specified in the bill of lading:—*Held*, that the bill of lading did not incorporate the stipulation in the charterparty as to the payment of freight, that no right of lien existed for the freight mentioned in the charterparty, and that the plaintiffs were entitled to delivery of the goods upon payment of the freight specified in the bill of lading. *GARDNER v. TRECHMANN* 15 Q. B. D. 154,

[54 L. J. Q. B. 515, 53 L. T. 518 (C.A.)]

2. — *Construction—Cancellation.]* A charterparty provided, that should the steamer not be ready to load on or before the 31st May, 1882, the charterer should have the option of cancelling the charter. On that day the vessel had discharged two holds only of its outward cargo, and was not completely discharged till the middle of the following day: *Held*, that the charterers were entitled to cancel the charter. *GROVES, MACLEAN AND CO. v. VOLKART* — — 1 C. & E. 309

3. — *Construction—Freight—“Port”—Final sailing of Ship from last Port.]* The word “port” in a charterparty is to be understood in its popular, or business, or commercial sense; it does not in such a document necessarily mean the port as defined for revenue or pilotage purposes.—Tests for determining the business meaning of the word “port” considered.—A charterparty provided that a ship should load a cargo of coals at Cardiff, and then proceed to Bombay, the freight to be paid two-thirds in cash “ten days after the final sailing of the vessel from her last port in Great Britain,” and the remainder in cash on delivery of the cargo. The ship loaded the coals in the Bute Docks, at Cardiff, and, having cleared at the Custom House, started on her voyage to Bombay. She proceeded down the artificial channel leading from the docks to the River Taff, and, when about 300 yards beyond the junction of the channel with the river, she came into collision with a steamer, and was so much injured that she was compelled to return the next day to the docks for repairs:—*Held*, that at the time of the collision the ship was not outside

**III. SHIP—CHARTERPARTY—continued.**

the limits of the port, in the popular, business, or commercial sense of the word; that, consequently she had not finally sailed from her last port; and that no freight was payable. *"GARSTON"* SAILING-SHIP Co. v. HICKIE - 15 Q. B. D. 580 (C.A.)

4. — *Construction—Freight payable in advance—“Steamer lost or not lost”—Negligence.* Held, by Denman, J., a stipulation in a charterparty that four-fifths of the freight should be paid in advance—“Steamer lost or not lost” does not prevent the charterer from recovering that amount as damages from the shipowner upon a loss of the vessel owing to negligence. *GREAT INDIAN PENINSULAR RAILWAY Co. v. TURNBULL* 53 L. T. 325, [33 W. R. 874]

5. — *Construction—Freight.* A charterparty provided that the hire of a vessel should commence at noon of a certain day, and freight was payable at so much per calendar month; and “at and after the same rates for any part of the month,” until her delivery to owners. On the day the hiring terminated she was delivered to her owners at 5.30 p.m.:—Held, that the charterers were liable for freight for the whole day, commencing at noon on the day of her delivery. *ANGER v. STEWART* - - - 1 C. & E. 357

6. — *Construction of—Ready Quay Berth as ordered by charterer—Demurrage.* By a charterparty it was agreed that the Plaintiff's vessel after loading a certain cargo should proceed “to London or Tyne dock to such ready quay berth as ordered by the charterers,” “demurrage to be at the rate of £30 per running day,” in no case unless in berth before noon were the lay days to count before the day following that on which the vessel was in berth, and the captain or owners were to have an absolute lien on the cargo for all freight and demurrage in respect thereof.—The vessel was ordered by the charterers to a certain London dock, but when the vessel arrived at such dock there was no quay berth ready for her, and she was consequently detained one day beyond the time required for discharging her had she been able to have got alongside a quay berth on her arrival in the dock:—Held, on the construction of this charterparty, that the charterers were bound to name such quay berth as was ready, and that for the detention caused by the charterers neglecting to do so the Plaintiffs were entitled to a lien on the cargo for demurrage, the damage for the detention being sufficiently in the nature of demurrage to come within the demurrage clause. *HARRIS AND DIXON v. MARCUS JACOBS AND Co.*

[15 Q. B. D. 247, 54 L. J. Q. B. 492 (C.A.)]

7. — *“Excepted Dangers”—Option to cancel for non-arrival at Loading Port.* By a charterparty of a steamship it was agreed that she should go to “three safe loading places” between two named ports, and there load from the charterers a cargo of oranges, and, being so loaded, proceed to London . . . and deliver the same pursuant to bills of lading . . . (the act of God . . . and all dangers of the seas, rivers, and steam navigation of what nature and kind soever during the said voyage always excepted), and the charterers thereby promised to load the cargo, and stipulated, after a provision for working and lay days, that “should the steamer not be arrived at first loading port free of pratique and ready to load on or before the

**III. SHIP—CHARTERPARTY—continued.**

15th of December next, charterers have the option of cancelling or confirming this charterparty.”—By dangers of the seas, the steamer, although arrived at the first loading port, was not free of pratique and ready to load on the 15th of December, and the charterers therefore cancelled the charterparty.—At the trial of an action against them for not loading the cargo, the judge left to the jury the disputed question whether the port was a “safe loading place,” but being asked by them for his opinion thereon, gave it, and they found in the affirmative:—Held, by Coleridge, C.J., Mathew and Smith, JJ., (1) that this expression of opinion was under the circumstances no misdirection; (2) that the excepted dangers clause applied only to the voyage, and not to the clause giving the option to cancel the charterparty if the ship was not ready to load on the day fixed, and therefore the cancellation was justified. *SMITH v. DART AND SON* [14 Q. B. D. 105, 54 L. J. Q. B. 121, 52 L. T. 218, [33 W. R. 455, 5 Asp. M. C. 360]

8. — *Lighter—Letting of, “without risk of craft.”* Where a lighter was let out “without risk of craft,” and the goods on board were damaged by sea water:—Held, that the owner of the lighter was not liable for the loss. *WEBSTER AND Co. v. BOND AND STOREY* - - - 1 C. & E. 338

9. — *Negligent Navigation—Cargo in part saved—Payment of salvage expenses by underwriters—Recovery by owner of cargo of amount of expenses against shipowners.* A cargo of rye was shipped by the Plaintiffs under a charterparty on board the Defendants' ship. Owing to the negligent navigation of the Defendants' servants, the ship was cast ashore, and a large quantity of the rye was lost; but a considerable quantity was saved by the Salvage Association, who were employed by the underwriters of the cargo with the Defendants' assent. The average statement was prepared, and the sum assessed was agreed to by the Plaintiffs, and the Salvage Association were paid by the underwriters the expenses claimed by them. The Plaintiffs brought their action to recover the amount of the salvage expenses so paid by the underwriters. The Plaintiffs recovered a verdict for an amount to be settled out of court. The question of law involved in the case was reserved for further consideration. The Defendants contended that they were not liable because the Plaintiffs themselves had not paid the expenses, and the payment was under the circumstances voluntary.

Held, by Huddleston, B., that the Plaintiffs were entitled to recover the amount of the salvage expenses, as, without their being incurred, the remainder of the cargo could not have been sent to its destination, which was for the benefit of the Defendants, and that the payment was not, under the circumstances, voluntary. *SCARAMANGA v. MARTIN MARQUAND AND Co.* - 52 L. T. 764

— *Insurance of chartered freight—Duration of risk.*

See *INSURANCE, MARINE*. 8.

— *Lay Days—Demurrage.*

See *SHIP—DEMURRAGE*.

**IV. SHIP—COLLISION—Damages—Both ships to blame—Breach of contract—Charterparty—Bill of lading—Damage to cargo.** The Admiralty

IV. SHIP—COLLISION—*continued.*

Court rule that in collision cases, where both ships are to blame, the damages are to be equally divided, does not apply to actions for breach of contract of carriage brought by owners of cargo against the carrying ship to recover damages for loss of, or injury to, their goods, and hence the Plaintiffs in such actions are entitled to recover their full damages from the owners of the carrying ship. So *held*, by Butt, J. *BURNES AND SONS v. PERSIAN GULF STEAMSHIP CO. THE "BUSHIRE"*

[52 L. T. 740]

2. — *Damages—Cargo—Reshipment—Use of Damaged Cargo.*] Plaintiffs' cargo of coals on board the K. was damaged by a collision at C., the port of loading, and had to be unloaded. It was ultimately reshipped and carried on to B., and used by the Plaintiffs in smithies, though it was not purchased for this purpose. The shipowner was not willing to ship a fresh cargo except on fresh terms, and the Plaintiffs did not ascertain what those terms were. On a reference as to damages, in an action between the owners of the coal and the owners of the vessel with which the K. came into collision, the assistant registrar decided that the Plaintiffs were only entitled to recover the difference between the value of sound and damaged coal at the port of loading, and that if the value was that at the port of destination it must be taken to be the value of smithy coal. On objection to this report:—*Held*, by Hannen, P., that the shipowner had a right to insist on carrying on the same cargo; that it appearing that he had been willing to take a fresh cargo on fresh terms, it was the duty of the Plaintiffs to have ascertained what those terms were, so as to diminish the loss as much as possible, before comparing the loss on the damaged cargo at B., and that from the sale of it at C., and shipping a fresh one:—*Held*, also, that the coal having been used for a particular purpose, was not a reason for estimating its value at that of coal ordinarily used such purpose. *THE "BLENHEIM"* 10 P. D. 167, [54 L. J. P. 81, 34 W. R. 154]

3. — *Damages—Commission for Bail—Salvage Action.*] Commission paid for bail in a salvage action will not be allowed as part of the damages recoverable by the salvaged vessel in action of damage. *THE "BRITISH COMMERCE"* — 9 P. D. 128, [53 L. J. P. 72, 51 L. T. 604, 33 W. R. 200, [5 Asp. M. C. 335]

4. — *Damages—Consequential Damage.*] When a ship is damaged by collision and, on opening her up to effect the repairs rendered necessary by the collision, certain parts of her not injured by the collision are found to be rotten and to require renewing, the cost of such renewal cannot be charged to the collision damage, although such parts but for the opening up would have lasted for some years:—So *held*, by Hannen, P., and Butt, J. *THE "PRINCESS"* — 52 L. T. 932

5. — *Damages—Tug and Tow—Joint Tortfeasors—Measure of Damages.*] A schooner having come into collision with a tug and her tow, a damage action *in rem* was begun by the owners of the schooner against the tug to recover all the damages occasioned by the collision. After the collision the Plaintiffs received from the owners of the tow a sum of money, described in an agreement entered into between these parties as "an advance

IV. SHIP—COLLISION—*continued.*

on account of the damages to be recovered from" the tug. By the agreement it was agreed that the owners of the tow should give the Plaintiffs all information and assistance necessary to bring the action to a successful issue; that if the schooner and the tug should both be held to blame, the Plaintiffs should repay any sum by which the money already paid exceeded the moiety of damages recoverable against the tug; and that, as a basis of the arrangement, it was understood that the schooner should be found blameless for the collision. The Court having found the tug alone to blame:—*Held*, by Hannen, P., that the above payment was not such a payment by the tow in satisfaction of the damages occasioned by the collision as amounted to a settlement in discharge of the action, and was consequently no bar to the action, and that, notwithstanding the advance paid by the tow, the Plaintiffs were entitled to recover from the Defendants all the damages occasioned by the collision.

It is not the duty of those in charge of a tow which is being towed with a long scope of hawser by night at sea, to direct the movements of the tug—the circumstances being different from towing by day in a river. *THE "STORMCOCK."* 53 L. T. 53

6. — *Danube Commission Rules, R. 34, c. 2—Negligence.*] Under Rule 34, c. 2, of the Danube Commission Rules, vessels going down the Danube should keep to the right bank.

Where a vessel going down the Danube, when there was a fog and approaching night, went to the left bank, *held*, that according to the true construction of the rule, that was neglect of duty; and that such negligence was the cause of a collision which occurred with a vessel coming up, although the absence of lights on the latter vessel might have partly contributed to the accident. *RUSSIAN SS. "YOURRI" v. BRITISH SS. "SPEARMAN."* MATWIEF v. WHITOCK — 10 App. Cas. 276, [53 L. T. 29 (P.C.)]

7. — *Humber Rules—Stern Light—Compulsory Pilotage—25 & 26 Vict. c. 63, s. 32—36 & 37 Vict. c. 85, s. 17.*] The R. in charge of a tug was dropping stern foremost up the Humber with the tide, and was eventually brought athwart the tide to go into dock. The R. was exhibiting, in addition to the mast-head and side-lights, a white light from the main peak showing astern, which had been placed there by order of the pilot who was by compulsion of law in charge of the R. The Rules for the Navigation of the River Humber, made by Order in Council in pursuance of 25 & 26 Vict. c. 63, s. 32, incorporate the Regulations for Preventing Collisions at Sea. The E. coming down the Humber and the R. came into collision. At the hearing it was admitted that the E. was to blame:—*Held*, by Butt, J., that the R. was also to blame, for that as the Humber rules were within the purview of 36 & 37 Vict. c. 85, s. 17, there had been, by the exhibition of a stern light, a breach of a statutory regulation, namely, of art. 2, which it was impossible to say might not have contributed to the collision, and there was no circumstance to make a departure from the regulation necessary:—*Held*, also, that the light having been exhibited by order of the pilot, did not exempt the owner of the R. from liability, as the master should not have per-

IV. SHIP—COLLISION—*continued.*

mitted an infringement of the regulations. *THE "RIPON."* 10 P. D. 65, 54 L. J. P. 56, 52 L. T. 438, [33 W. R. 659, 5 Asp. M. C. 365]

8. — *Negligence, Evidence of—Steam Steering-Gear.*] A steamship fitted with a patent steam steering-gear ran into a vessel at anchor in the Thames, owing to the steering-gear suddenly not acting; every effort was unavailingly made to avoid the collision. A few days before, on the previous voyage of the same steamship, the same apparatus had similarly refused to act, but no cause for it so doing could be seen on examination. Large numbers of the gears were in use on steamers. In an action of damage:—*Held*, by Butt, J., first, that the Defendants were not liable for damage caused by the use of this apparatus without negligence; secondly, that the use of this apparatus on the Thames, after it had acted wrongly on a previous occasion, was evidence of negligence, and that the Defendants were liable for the damage caused thereby. *THE "EUROPEAN"* - 10 P. D. 99, [54 L. J. P. 61, 52 L. T. 868, 33 W. R. 937]

9. — *Sailing Rules—Regulations for Preventing Collisions at Sea, arts. 2 and 11.*] A ship showed a flare-up light to a steamer approaching on her starboard side:—*Held*, by Hannen, P., not an infringement of arts. 2 and 11, as such light was not calculated in the circumstances to mislead the approaching vessel. *THE "MERCHANT PRINCE."* [10 P. D. 139, 54 L. J. P. 79]

10. — *Sailing Rules—Trawler's Lights—Regulations for Preventing Collisions at Sea, 1884, art. 10.*] The above article, which requires all fishing vessels of 20 tons and upwards, "when under way," to carry the ordinary lights of a vessel under way, unless required by other regulations to carry the lights therein prescribed, applies to trawlers whilst engaged in trawling and in motion.

Where a steamship, having come into collision with a trawler which, in violation of the above regulations, was carrying a white masthead light in addition to side lights, and it appeared that those on board the steamship had not seen the white light, the Court refused to hold the trawler to blame for the breach of the regulations, on the ground that it could not possibly have contributed to the collision. *THE "CHUBAN"* - 53 L. T. 60

11. — *Sailing Rules—Regulations for Preventing Collisions at Sea, art. 13.*] The term "moderate speed" used in art. 13 of the Regulations for Preventing Collisions at Sea is a relative term, depending upon the circumstances.—When a sailing ship was going in a dense fog at a speed greater than was enough to keep her under control:—*Held*, that she had infringed art. 13. *THE "BETA."* *THE "PETER GRAHAM"* 9 P. D. 134, [51 L. T. 154, 33 W. R. 190 (C. A.)]

12. — *Sailing Rules—Probability of Risk—Regulations for Preventing Collisions at Sea, art. 18.*] The S. and the C. were approaching each other at night on opposite courses, so as to pass starboard to starboard. The master of the C. saw the green and white lights of the S., somewhat more than a quarter of a mile distant, coming into line. This indicated a probability that the S. was porting, which would cause a risk of collision; soon after the red light of the S. was seen. The engines of the

IV. SHIP—COLLISION—*continued.*

C. had been previously stopped, but the master did not reverse her engines till the red light of the S. was seen; the vessels soon after came into collision:—*Held*, that the C. was to blame for infringing art. 18 of the Regulations for Preventing Collisions at Sea, because as there was a probability of risk of collision when the master of the C. saw the green and white lights of the S. coming into line, he should, being aware of such probability, have then reversed the engines of the C. *THE "STANMORE"* [10 P. D. 134, 54 L. J. P. 89, 53 L. T. 10 (C. A.)]

13. — *Sailing Rules—Fog—Regulations for Preventing Collisions at Sea, art. 18.*] A steamer heard a whistle on her port bow in a dense fog, and it was repeated, shewing that the vessel from which it was sounded was approaching and was in her vicinity:—*Held*, that under such circumstances it is a general rule of conduct that there is a necessity to stop and reverse, and that she had disobeyed art. 18 by not so doing. *THE "JOHN MOLINTYRE"* [9 P. D. 135, 53 L. J. P. 115, 51 L. T. 185, [33 W. R. 180 (C. A.)]

14. — *Sailing Rules—Fog—Regulations for Preventing Collisions at Sea, arts. 13, 18.*] A steamship the D. in a dense fog off Ushant proceeding at slow speed heard a whistle about three points on her starboard bow, the whistle was repeated several times and answered by the D. In about a quarter of an hour from the first sound of the whistle the steamship E. appeared about a length from the D. crossing from starboard to port. The engines of the D. were reversed full speed, but a collision occurred. Butt, J., having held both ships to blame, the owners of the D. appealed.—*Held*, by the Court of Appeal (affirming the decision of Butt, J.), that the D. was also to blame, for she should have been brought to as complete a standstill as possible, without getting out of command, at an early period after the first sound of the whistle, and should have also stopped and reversed sooner.—*Per Brett, M.R.*: Under art. 13 "a moderate speed"—in a river or narrow channel—means that a vessel shall be brought nearly to a standstill, whether the whistle or fog-horn of another vessel is heard or not, but in the open sea the article need not be so strictly construed, unless a whistle or fog-horn is heard.—Under art. 18 as soon as it is perceived by those on a steamer in a dense fog that a vessel is coming substantially nearer, the steamer should stop and reverse.—*Semble*, though art. 18 does not apply to a sailing ship, yet she ought in similar circumstances, to take off sail so as to come to as complete a standstill as possible, without getting out of command. *THE "DORDOGNE"* - 10 P. D. 6, [54 L. J. P. 29, 51 L. T. 650, 34 W. R. 360, 5 Asp. [M. C. 328 (C. A.)]

15. — *Sailing Rules—Regulations for Preventing Collisions at Sea—Arts. 16, 18, 22.*] The A. and B. were crossing within the meaning of art. 16, and it was the duty of the A. to keep out of the way of the B., but she did not do so. The B. when from a quarter to half a mile distant slackened her speed and continued with slackened speed to within 300 yards of the A., and then stopped and reversed, but not in time to prevent a collision:—*Held*, reversing the decision of Butt, J. (9 P. D. 4, 49 L. T. 748, 32 W. R. 648, 5 Asp. M. C. 193), that the B. must be held, for

**IV. SHIP—COLLISION—continued.**

not stopping and reversing sooner, to blame as well as the A. Arts. 16 and 18 are intended to be applicable according to the circumstances as they would present themselves to the mind of a prudent sailor, and come into force before the risk of collision is fixed and determined.—*Held*, also, that the word "course," in art. 22 refers to the direction of the vessel's head and not to her speed.—Per Brett, M.R. If the Judge of the Court below differs from his assessors, he is bound to decide in accordance with his own opinion. *THE "BERYL"* 9 P. D. 137, [53 L. J. P. 75, 51 L. T. 554, 33 W. R. 191, [5 Asp. M. C. 321 (C.A.)]

16. — *Sailing Rules—"Narrow Channel"—Falmouth Harbour—Regulations for Preventing Collisions at Sea*, 1880, art. 21.] The above article, which provides for steamships entering "narrow channels," applies to a steamship entering and passing up Falmouth Harbour, and if a steamship going into that harbour keeps to the side of the channel which lies on her port hand, she violates the regulations. *THE "CLYDACH"* 51 L. T. 668, [5 Asp. M. C. 336]

17. — *Thames Rules*, No. 23—*Contributory Negligence*.] Rule 23 of the Thames Rules is not confined to the seaward side of "a line drawn from Blackwall Point to Bow Creek."

The order of the Court of Appeal (9 P. D. 47, 53 L. J. P. 17, 50 L. T. 447, 32 W. R. 564, 5 Asp. M. C. 204) reversed, and the order of Butt, J. (8 P. D. 126, 52 L. J. P. 65, 49 L. T. 332, 31 W. R. 813, 5 Asp. M. C. 137, 1883 Dig., col. 394), restored, on the ground that even assuming (but without deciding) that the construction put by the Court of Appeal upon r. 23 was correct, and that the *Clan Sinclair* had transgressed that rule, yet such transgression was not the cause of the collision; that ordinary care on the part of the *Margaret* would have enabled her to avoid the collision, and that she alone was to blame. *CATZER, IRVINE & CO. v. CARRON CO. THE "MARGARET"* [9 App. Cas. 873, 54 L. J. P. 18, 52 L. T. 361, [33 W. R. 281, 5 Asp. M. C. 371 (H.L., E.)]

— Limitation of liability—Registered tonnage. See SHIP—MERCHANT SHIPPING ACTS. 2.

**V. SHIP—DEMURRAGE—Charterparty—Lay Days—Usual Place of Discharge—Custom to lighten Vessel at Entrance to Port before proceeding to Place of Discharge.**] By charterparty it was agreed that the Plaintiff's steamship should proceed to Cronstadt and load a cargo of wheat and therewith proceed to a port in the English or Bristol channel as ordered, "or so near thereto as she may safely get at all times of the tide and always afloat, and deliver the same. Eight running days, Sundays excepted, to be allowed the merchants, if the ship be not sooner dispatched, for loading and discharging the steamer, and ten days on demurrage if required over and above the laying days at £25 per day." The steamer arrived at Cronstadt, occupied six running days in loading a cargo of 4325 quarters of wheat, and was ordered to Gloucester, Bristol Channel, for discharge. She arrived at Sharpness Dock in the Bristol Channel on the 13th of November. Sharpness Dock is within the port of Gloucester, and about seventeen miles from the basin within the city of Gloucester

**V. SHIP—DEMURRAGE—continued.**

where grain cargoes are usually discharged if the burthen of the ship will admit. The steamer was ready to commence the discharge of her cargo on the 13th, but could not get nearer to Gloucester than Sharpness until part of her cargo was first discharged at Sharpness. On the 14th and 15th of November the consignees discharged into lighters 1585 quarters of the cargo, and then required the master to take the steamer through the canal to a place of discharge within the basin at Gloucester. The master proceeded, and arrived in the basin on the 17th. On the 18th the residue of the cargo was discharged and the vessel returned to Sharpness, where she arrived on the 19th. In an action for demurrage evidence was given of a custom of the port of Gloucester, according to which the usual place of discharging grain cargoes was at the basin within the city, and when vessels with grain cargoes destined for Gloucester were of too heavy a burthen to come up the canal they were lightened at Sharpness, and during the discharge at Sharpness of so much of the cargo as it was necessary to discharge in order to enable the vessel to proceed by the canal to Gloucester Basin the lay days counted, but the time occupied in coming up the canal to discharge at Gloucester Basin and by returning to Sharpness was not counted:—*Held*, by Pollock, B., first, that the custom was reasonable, as the effect of it was not to detain the ship longer than if she had been wholly discharged at Sharpness; secondly, that it was not inconsistent with the express provisions in the charterparty as to running days, for the proper inference from the facts was that the discharge of the vessel except for the purpose of lightening her did not commence until she arrived within Gloucester Basin. That, therefore, the time occupied by the vessel in going from Sharpness to the basin and in returning to Sharpness ought to be excluded from the lay days, and that the Plaintiffs were entitled to one day's demurrage only. *Caffarini v. Walker* (Ir. Rep. 9 C. L. 431; Ir. Rep. 10 C. L. 250) and *McIntosh v. Sinclair* (Ir. Rep. 11 C. L. 456) considered. *NIELSEN v. WAIT* 14 Q. B. D. 516, [34 W. R. 33 (affirmed by C. A., 16 Q. B. D. 67)]

— Charterparty—Construction. See SHIP—CHARTERPARTY. 6.

**VI. SHIP—FREIGHT—Pro ratâ—Abandonment—Salvage—Wages Action.**] Where a salving ship takes a crew off a vessel in distress and puts men on board of her, refusing to allow her own crew to return, and the two vessels are in company navigated into port, there is no such abandonment of the ship as to put an end to the contract of carriage, and consequently there will be freight due upon the consignees requiring delivery of the cargo, such freight being *pro ratâ*, assuming the port not to be the port to which the cargo ought to have been taken under the contract of carriage. So *held* by Butt, J. *THE "LEPTIR"* — — 52 L. T. 768

— Charterparty. See SHIP—CHARTERPARTY. 1, 3–5.

**VII. SHIP—GENERAL AVERAGE—Liability of Cargo Owner for General Average Contribution.**] When ship and cargo are in peril, the fact that the shipowners have by the act of the master become bound to pay and have paid a sum of money for preservation of ship and cargo, and the master in so

**VII. SHIP—GENERAL AVERAGE—continued.**

inding them pursued a reasonable course under the circumstances, is not conclusive that the whole sum was chargeable to general average so as to bind the cargo owners to pay their proportion.

The decision of the Court of Appeal (13 Q. B. D. 651, 58 L. J. Q. B. 161, 50 L. T. 171, 32 W. R. 472, 25 Asp. M. C. 202, 1884 Dig., col. 464) reversed and a new trial ordered on the ground that the question of the amount chargeable to general average ought to have been submitted to the jury. *ANDERSON, TRITTON & Co. v. OCEAN STEAMSHIP Co.* 10 App. Cas. 107, 54 L. J. Q. B. 192, 52 L. T. [441, 33 W. R. 433, H. L. (E.) 107

— Expenses of reshipping cargo and of ship leaving port of refuge.

See INSURANCE, MARINE. 1.

**VIII. SHIP—HARBOUR COMMISSIONERS—**

*Damage—Harbour Master—Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27) s. 52.* The R., which was anchored in F. outer harbour, having to be beached in the inner harbour, S., the harbour master, directed the master of the R. where she was to be beached. Before the R. left the outer harbour S. came on board, and when she arrived near the place where she was to be beached, S. gave orders as to the lowering of her anchor. The R. overran her anchor and grounded on it, sustaining damage. The R. grounded, and the order was given, outside the jurisdiction of the harbour commissioners, but the spot where the R. was to be beached was within their jurisdiction. The Court below found that S. had been negligent in fact:—*Held*, by the Court of Appeal, affirming the decision of Sir James Hannen (10 P. D. 24, 54 L. J. P. 42, 52 L. T. 140, 33 W. R. 599, 5 Asp. M. C. 350), that the commissioners were liable, for under the circumstance the order given by S. was within the scope of his authority as harbour master. *THE "RHOSINA."* *EDWARDS v. FALMOUTH COMMISSIONERS* 10 P. D. 131, 54 L. J. P. 72, 53 L. T. 30, [33 W. R. 794 (C.A.)

**IX. SHIP—MASTER—Wages—Lien for—Managing Owner—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 187—Merchant Seamen Act, 1880 (43 & 44 Vict. c. 16), s. 4.]** Where the master of a ship elects to allow a portion of his wages to remain in the managing owners' hands at interest, he loses his lien by so doing, and cannot recover such portion *in rem*, but if he has had no opportunity of receiving his wages, or has been refused payment of them on demand, the mere fact of his allowing them to remain in the managing owners' hands after they become due will not deprive him of his remedy.

Where shipowners, in answer to a claim for wages, plead an agreement between the managing owners and the Plaintiff, that the Plaintiff shall, instead of receiving his wages, allow them to remain in the managing owners' hands, and that he has thereby foregone his right against the ship, the onus is upon the Defendants to clearly prove that there was an express arrangement to that effect, before the Court will deprive the Plaintiff of his right.

Under the above sections, relating to the non-payment of wages, the right to recover ten days' double pay and wages to the time of final settle-

**IX. SHIP—MASTER—continued.**

ment is not enforceable where there is a *bond fide* question as to liability.

So held, by Butt, J. *THE "RAINBOW"*

[53 L. T. 91

— Admission by—Letter.

See EVIDENCE. 2.

— Authority—Necessity.

See SHIP—BOTTOMRY.

**X. SHIP—MERCHANT SHIPPING ACTS—Limitation of Liability—Foreign Ship—Crew Space—**

*Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 21—Merchant Shipping Act, 1867 (30 & 31 Vict. c. 124), s. 9.]* The owners of a foreign ship with a closed-in space on the upper deck solely appropriated to the berthing of the crew, are entitled, in limiting their liability, to deduct such space under the Merchant Shipping Act, 1854, s. 21, sub-s. 4, though the provisions of the Merchant Shipping Act, 1867, s. 9, have not been complied with. *THE "FRANCONIA"* (3 P. D. 164) explained. *THE "PALERMO"* — 10 P. D. 21, 54 L. J. P. 46, [52 L. T. 390, 33 W. R. 643, 5 Asp. M. C. 369

2. — *Limitation of Liability—Collision—Registered Tonnage—Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 54.]* The tonnage in respect of which shipowners are entitled to limit their liability under the above section is the tonnage appearing on the ship's register which was in force at the time of collision. *THE "DIONE"* 52 L. T. 61, 5 Asp. M. C. 347

— Wages—Master—Lien.

See SHIP—MASTER.

**XI. SHIP—NECESSARIES—Foreign Vessel—**

*Maritime Lien—3 & 4 Vict. c. 65, s. 6—24 Vict. c. 10, s. 5—Bottomry Bond.]* A foreign vessel was in an English port, and the owner being temporarily in England and in want of funds for the purchase of necessities, made an agreement with the Plaintiffs, by which, in consideration of their advancing him by cash or acceptance £600 for necessities supplied to and for the use of the vessel, he thereby undertook to return them the amount so advanced, with interest and all charges on the return of the vessel from her voyage. And the Plaintiffs were thereby authorized "to cover the amount advanced the owner by insurance on ship, &c., out and home at owner's cost." In an action *in rem* for necessities in respect of the amount so advanced:—*Held*, by the Court of Appeal (Bowen and Fry, L.J.J., Brett, M.R., doubting), first, that the agreement was not equivalent to a bottomry bond; secondly (by the whole Court) that there was no lien for necessities, for that before 3 & 4 Vict. c. 65, s. 6, there was no maritime lien on a foreign ship for necessities supplied to her, that that section did not give any maritime lien, but only a right to seize the ship on the institution of an action, and therefore that the Plaintiffs were not entitled to recover against the vessel.—Judgment of Sir J. Hannen (8 P. D. 151, 52 L. J. P. 83, 49 L. T. 405, 32 W. R. 279, 5 Asp. M. C. 145, 1884 Dig. col. 446) reversed. *THE "ELLA A. CLARK"* (Br. & L. 32, 8 L. T. 119, 11 W. R. 534) overruled. *THE "TWO ELLENS"* (L. R. 4 P. C. 161, 20 W. R. 592) explained. *THE "HEINRICH BJORN"* 10 P. D. 44, 54 L. J. P. 33, [52 L. T. 560, 33 W. R. 719, 5 Asp. M. C. 391 (C.A.)

**XI. SHIP—NECESSARIES—continued.**

— Bottomry bond.

See SHIP—BOTTOMRY.

**XII. SHIP—OWNERS—Co-Ownership—Charter—Managing Owner—Commission.]** A vessel was chartered for twelve months, and during the currency of the charter the charterers made default in certain payments and the charter lapsed. The vessel was re-chartered by a voyage charter from K. to England. During the performance of this voyage the Defendant purchased a share in this vessel. *Held*, by Butt, J., on objection to the registrar's report in a co-ownership action, that the Defendant was not liable to bear any of the losses occasioned by the time charter. *Held*, also, that a part owner being the manager of a ship, is entitled to remuneration for his services, but that there is no fixed rate applicable. *THE "MEREDITH."* *WHITE v. DITCHFIELD* 10 P. D. 69, 52 L. T. 520, 5 Asp. M. C. 400

— Co-ownership action.

See PRACTICE—ADMIRALTY. 3, 10, 14.

**XIII. SHIP—SALVAGE—Agreement—Action by Seamen—Plea of Tender without payment into Court.]** An agreement was made between the masters of the W. and the N., which was in need of assistance, that the W. should tow the N. to Queens-town for the sum of £200. There was no evidence at the trial to shew that the master of the W. consulted the officers and crew as to the terms of the agreement. The service was duly performed, and subsequently thirteen of the officers and crew of the W. brought an action of salvage against the N. The Defendants pleaded, *inter alia*, that they had tendered £200 to the owners of the W., but this sum was not paid into Court. *Held*, by Butt, J., first, that a plea of tender without payment into Court was bad; secondly, that the agreement must be upheld, and the £200 apportioned amongst the owner and crew of the W.; thirdly, that when a fair salvage agreement has been made in a *bonâ fide* manner by the masters of the salving and the salvaged vessels the officers and seamen of the salving ship ought not to bring an action of salvage, and that the Plaintiffs must therefore pay the costs of the action. *THE "NASMYTH"* 10 P. D. 41, [54 L. J. P. 63, 52 L. T. 392, 33 W. R. 736, 5 Asp. M. C. 364]

2. — *Cargo—Liability of Shipowner—Agreement—Average Bond.]* The G. fell in with the R., which was in distress. The following agreement was signed by the two captains: "At my request the captain of the G. will tow my ship the R. to St. Nazaire, that being the nearest port, for repairs. The matter of compensation to be left to arbitrators at home." The G. towed the R. safely to St. Nazaire. The R. discharged her cargo at Dunkirk, and an average bond in the usual form was taken from the consignees of the cargo. The owners of the G. brought an action for salvage of the ship and freight against the R., and were awarded salvage. They also brought an action in France for the salvage of the cargo against the cargo owners, but failed in it. They then brought this action *in personam* against the owners of the R. to recover salvage in respect of the services to the cargo or, in the alternative, damages from the Defendants, for not taking a proper bond to secure salvage from the cargo owners. *Held*, by Hannen, P., that the Defendants were not primarily liable

**XIII. SHIP—SALVAGE—continued.**

to pay salvage in respect of the cargo, that they had not bound themselves by the above agreement to do so, and that it was not their duty to obtain a bond from the cargo owners for the proportion of any salvage which might be due. *THE "RAISBY."* *CARDIFF STEAMSHIP CO. v. BARWICK* 10 P. D. 114, [54 L. J. P. 65, 53 L. T. 56, 33 W. R. 936]

3. — *Salving and salvaged Ships belonging to same Owners—Warranty of Seaworthiness—Bill of Lading—Exceptions—"Dangers and accidents of the seas."]* A steamship laden with cargo became disabled at sea in consequence of the breaking of her crank shaft. Such breakage was caused by a latent defect in the shaft, arising from a flaw in the welding, which it was impossible to discover. Her cargo was shipped under bills of lading which contained among the excepted perils "all and every the dangers and accidents of the seas and of navigation of whatsoever nature or kind." Another vessel belonging to the same owners towed the disabled vessel to a place of safety. In an action of salvage brought by the owners, masters, and crew of the salving vessel against the owners of cargo on the salvaged ship:—*Held*, by Butt, J., that the master and crew were entitled to salvage, but that the owners were not, for that there was an implied warranty by them that the vessel was seaworthy at the beginning of the voyage:—*Held*, also, that the exceptions in the bill of lading had no application to a vessel not seaworthy at the time of sailing, and that the Defendants were entitled to judgment on their counter-claim for the salvage awarded to the master and crew. *THE "GLENFRUIN."* *OWNERS OF THE "GLENAVON" v. THE "GLENFRUIN"* [10 P. D. 103, 54 L. J. P. 49, 52 L. T. 769, 33 W. R. 826]

— Abandonment—Freight *pro ratâ*.

See SHIP—FREIGHT.

— Action—Transfer to Admiralty Division.

See PRACTICE—TRANSFER. 1.

— Costs—Tender.

See PRACTICE—ADMIRALTY. 6.

— Payment of salvage expenses by underwriters—Recovery by cargo owner against ship owner.

See SHIP—CHARTERPARTY. 9.

**XIV. SHIP—WAGES—Desertion by Seaman—17 & 18 Vict. c. 104, s. 249.]** Circumstances which were held insufficient to infer desertion of his ship by a seaman, so as to warrant forfeiture of his wages. *SEWARD v. RATTER* 12 C. of S. Cas. 222 (Sc.)

2. — *Misconduct—Mortgage.]* A mortgagee took possession of a ship by putting a man on board and giving notice to the master. The latter, by order of the mortgagor, took the vessel to sea with the man in possession on board. In an action by the master for wages, and for compensation for wrongful dismissal, the registrar awarded him a sum as compensation, being the amount of wages payable for two months after the mortgagee took possession:—*Held*, by Butt, J., on appeal, that the master had been guilty of misconduct in taking the vessel to sea, and could not as against the mortgagee be properly awarded any sum as compensation for wrongful dismissal. *THE "FAIRPORT"*

[10 P. D. 13, 54 L. J. P. 3, 52 L. T. 63, 33 W. R. 448, 5 Asp. M. C. 348]



**SHIP—WAGES—continued.**

- Master's lien for.

See SHIP—MASTER.

**P—Admiralty practice.**

See PRACTICE—ADMIRALTY.

- Insurance of.

See MARINE INSURANCE.

**OTING—Right of—Reservation of.**See LANDLORD AND TENANT—LEASE.  
11, 12.**RTHAND NOTES—Bankruptcy proceedings—Costs.**

See BANKRUPTCY—COSTS. 3.

**NDER OF TITLE—Patent—Infringement—Warning circular.**

See PATENT. 3.

**KE—Chimney sending forth—Nuisance.**

See PUBLIC HEALTH ACTS. 8.

**SOLICITOR:—**

I. ARTICLED CLERK.

II. AUTHORITY.

III. BILL OF COSTS.

IV. CERTIFICATE.

V. LIABILITIES.

VI. LIEN.

VII. PRIVILEGE.

VIII. RETAINER.

IX. STRIKING OFF ROLL.

X. UNQUALIFIED.

**SOLICITOR—ARTICLED CLERK—Return Premium].** A solicitor who had received a premium on taking an articulated clerk died during term of the articles:—

*Held*, by Pearson, J., that his estate was not due for the return of any part of the premium. *See v. CARR* - 28 Ch. D. 409, 54 L. J. Ch. 478, [52 L. T. 348, 33 W. R. 363, 49 J. P. 503]

— *Service as General Clerk—Sufficiency answers as to nature of*—23 & 24 Vict. c. 127, 40 & 41 Vict. c. 25, s. 6.] A solicitor's clerk claiming the right, under 23 & 24 Vict. c. 127, s. 4, to appear for his intermediate examination after having served as general clerk in a solicitor's office for seven years, and as an articulated clerk for a year and a half, stated, in answer to questions put to him by examiners for the Incorporated Law Society, that he had commenced such antecedent service at the age of 13. The examiners decided that such service at such age was not *bona fide* and active employment in the business of a solicitor's office, and refused to admit him to the examination. On application to the High Court to overrule this decision:—*Held*, by Grove and Denman, JJ., that the appeal would lie. *Re JAMES* - 33 W. R. 654

**SOLICITOR—AUTHORITY—Authority to receive Mortgage Money—Possession by Solicitor of Deed executed by Client.]** G. and H. were solicitors for £1000 on property of S. Their clients, D. & P., who had the deeds in their hands, applied to the Defendant, who was also a solicitor, saying that they believed he had £1000 to invest on mortgage, and that G. and H. had £1000 on a transfer of S.'s mortgage. The Defendant inspected the property, and being satis-

**II. SOLICITOR—AUTHORITY—continued.**

fied, he, on the 19th of June, 1878, sent the £1000 to D. & P., who gave him a receipt for it. In July, D. & P. fraudulently induced G. and H. to execute a deed of transfer to the Defendant with a receipt indorsed, which deed they stated to G. and H. to be a deed of reconveyance to S. on his paying off the mortgage. D. & P. shortly afterwards handed this deed with the title deeds to the Defendant, and went on paying him interest as if they had received it from S., who was in fact paying his interest to the agents of G. and H. G. and H. made no inquiry as to the mortgage, and this went on till 1883, when D. & P. became bankrupts, and the £1000 received from the Defendant, which had never been handed over to G. and H., was lost. G. and H. then brought their action against the Defendant, asserting a right against the property in the nature of an unpaid vendor's lien:—

*Held*, by the Vice-Chancellor of the county palatine, that on the evidence in the case D. & P. had authority to receive mortgage money on behalf of the Plaintiffs, and must be taken to have received the £1000 on their behalf, and that the action must be dismissed.

On appeal, Cotton, L.J., expressed great doubt (the other Judges giving no opinion on the point) whether D. & P., assuming them to have authority to receive mortgage money on behalf of the Plaintiffs, could be taken ever to have, in fact, received this £1000 on their behalf.

But *held*, by the Court of Appeal, that the decision must be affirmed on the ground that as the Plaintiffs by the deed of transfer and receipt which they handed to D. & P. enabled them to represent to the Defendant that the £1000 which he had previously handed to D. & P. had come to the hands of the Plaintiffs, they had raised a counter equity which prevented their claiming a vendor's lien, though this would not have been the case if (D. & P. having no authority to receive money for the Plaintiffs) the Defendant had paid the £1000 to D. & P. at the time when the deeds were delivered to him, since he would then have known that the Plaintiffs had not received the money. *Ex parte Swinbanks* (11 Ch. D. 525) distinguished. *GORDON v. JAMES* - 30 Ch. D. 249 (C.A.)

— Continuance of.

See PRACTICE—APPEAL. 14.

**III. SOLICITOR—BILL OF COSTS.—Action for Untaxed Bill—Motion for Judgment—G. O. (Ir.) XII., Rules 1. 2—Reference for Taxation—Form of Order.]** In an action by solicitors on foot of an untaxed bill of costs, the Court, on motion by the Plaintiffs, referred the costs for taxation subject to credits, and ordered judgment to be entered for the amount to be certified. Form of order. *LARKIN v. M'INERNEY* - 16 L. R. (Ir.) 246

2. — *Agreement for Costs—Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 7, 8, 9.]* A solicitor agreed to conduct certain bankruptcy proceedings on the terms that his costs should not exceed £10. In the course of the proceedings his clients left him and employed other solicitors, and he sent in a bill of costs for a larger amount than £10.

The County Court Judge declared the agreement to be void, because it did not contain a provision that the solicitor originally employed might conduct the bankruptcy proceedings to an end:—*Held*,

**III. SOLICITOR—BILL OF COSTS—continued.**

by Cave and Wills, JJ., that the order was wrong, on the ground that the agreement was fair and reasonable, and that the solicitor could have gained no advantage if he had been allowed to prosecute the proceedings in bankruptcy to a conclusion, since under no circumstances could he have obtained costs beyond the amount of £10 out of the estate. *Ex parte PAYTON. Re OWEN.* - - 52 L. T. 623

3. — “*Delivery*”—*Condition—Withdrawal—Delivery of Second Bill—Taxation, Common Order for—Practice—Solicitors Act* (6 & 7 Vict. c. 73), s. 37.] A solicitor may, when sending in his bill of costs to his client, reserve to himself the right to withdraw or alter it on condition, provided the condition is fully and clearly stated to the client: but if the solicitor has sent in his bill without any condition, or with a condition which he could not fairly impose, he cannot afterwards withdraw it or send in an amended bill.

A firm of solicitors, on being pressed by their clients to send in their bill of costs, delivered a bill accompanied by a letter saying that there were certain charges which, owing to haste, had not been included in the bill, but that they were willing to accept a stated sum in full discharge, though, if such sum was not paid within eight days, they reserved to themselves the right to withdraw the bill and deliver another. The clients, however, insisting on being furnished with the particulars of further charges, the solicitors wrote withdrawing the bill. The clients then obtained a common order for taxation of that bill, and for delivery and taxation of a further bill.

On motion by the solicitors, Bacon, V.C., discharged the common order on the ground that no bill had been “*delivered*” within the meaning of sect. 37 of the Solicitors Act, 6 & 7 Vict. c. 73; but ordered the solicitors to deliver a bill within fourteen days, such bill to be taxed.

The solicitors, in pursuance of that order, delivered a second bill, but of a considerably less amount than the first, whereupon the clients appealed to reverse that order and to have it declared that the bill to be taxed was that first delivered:—

*Held*, by Cotton and Lindley, L.JJ., discharging the last-mentioned order, that the first bill was conditional, but that the condition was one which a solicitor could not impose on his client, and that therefore the original common order for taxation must stand.

*Held*, also, that the clients should under the circumstances, instead of obtaining the common order to tax, have obtained a special order on petition raising the question as to the right of the solicitors to withdraw their bill: they were therefore allowed no costs of the proceedings in the Court below, but only the costs of the appeal. *In re THOMPSON.*

[30 Ch. D. 441, 53 L. T. 479, 34 W. R. 112 (C.A.)]

4. — *Past Costs—Ex parte Order for Taxation—Motion to discharge—Parol Agreement to pay a Lump Sum—Attorneys and Solicitors Act*, 1870 (33 & 34 Vict. c. 28), s. 4.] Since the Attorneys and Solicitors Act, 1870, a verbal agreement by a client to pay his solicitor a lump sum in discharge of past costs is not binding on the client. *Re RUSSELL, SON, AND SCOTT AND WALLIS*

[30 Ch. D. 114, 54 L. J. Ch. 948, 52 L. T. 794, 33 W. R. 815]

**III. SOLICITOR—BILL OF COSTS—continued.**

5. — *Scandalous matter in—Jurisdiction to strike out—O. XIX, r. 27: O. XXXVIII, r. 11.*] The general jurisdiction of the Court to prevent proceedings before it being made the vehicle of scandal or impertinence extends to a bill of costs delivered; and, accordingly, entries in a bill of costs which contain scandalous matter will be ordered to be struck out. So *held*, by Kay, J. *Erskine v. Gartshore* (18 Ves 114), followed *Re MILLER AND MILLER. Re FRENCH. LOVE v. HILLS* 54 L. J. Ch. 205, [51 L. T. 853, 33 W. R. 210, W. N. (1884) 234.

6. — *Solicitors’ Remuneration Act*, 1881—*General Order*, r. 4; *Sched. I. Part I. r. 11—Commission to Auctioneer.*] Property of a lunatic in Lancashire was put up for sale by auction under an order in lunacy, but was not sold. The solicitor charged £16 12s. 6d. remuneration according to the scale in the order under the Solicitors’ Remuneration Act, 1881, on £8300, the amount of the reserved prices. He also paid the auctioneer £5 5s., which was allowed against the estate, and the surveyor’s bill of £40 3s. was allowed at £31 10s. against the estate, but the Taxing Master disallowed the £16 12s. 6d., and only allowed £2 2s. for instructing the auctioneer and surveyor, and £3 3s. for particulars, &c. His reasons were, first, that the solicitor had not in fact conducted the sale, the auctioneer and surveyor having done most of the work, and been paid by the client; and secondly, that the scale did not apply, for that a commission had been paid to the auctioneer by the client within the meaning of rule 11 to Part I. of Schedule I, to the General Order:—

*Held*, by the Court of Appeal, that as the bill of the surveyor contained charges for various things which it was the duty of the person conducting the sale to do, the solicitor had not done the whole of the work for which the *ad valorem* remuneration was provided, and the scale did not apply:—

*Semble*, also, that the case was taken out of rule 4 by the specific provision of rule 11 to Part I. of Schedule I. to the order, which provides that the scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. *Re WILSON (a lunatic).*

[29 Ch. D. 790, 53 L. T. 406 (C.A.)]

7. — *Solicitors’ Remuneration Act*, 1881 (44 & 45 Vict. c. 44), s. 2—*General Order of August*, 1882, r. 2, *Schedule I, Part I. r. 11—Reinvestment under Lands Clauses Act*, 1845 (8 & 9 Vict. c. 18).] Money arising from the sale of land belonging to a corporation, and taken by a railway company under their statutory powers, was re-invested in land under the direction of the Court. The solicitor of the corporation charged the *ad valorem* scale fee prescribed by the rules under the Solicitors’ Remuneration Act, 1881, Schedule I. Part I., “for investigating title and preparing and completing conveyance.”—

*Held*, affirming the decision of Chitty, J. (29 Ch. D. 209, 54 L. J. Ch. 585, 33 W. R. 542), that the exception in Schedule I. Part I., rule 11, which provides that the scale shall not apply in cases of sales under the Lands Clauses Act, or any other private or public Act under which the vendor’s charges are paid by the purchaser, was not applicable to the case.

*Held*, also approving the decision of Kay, J., in *Stanford v. Roberts* (26 Ch. D. 155, 53 L. J. Ch. 338,

**II. SOLICITOR—BILL OF COSTS—continued.**

40 L. T. 147, 32 W. R. 404, 48 J. P. 692), that the words of rule 2, "not being business in any action or transacted in any Court or in the Chambers of any Judge or Master," apply only to the "other business" mentioned immediately before, i.e. to business not being conveyancing business, and do not exclude from the scale conveyancing business done under the direction of the Court.

*Held*, also, that as the purchaser's solicitor had had to do all the things which he would have had to do in a purchase not under the direction of the Court, the case was not taken out of the scale by the fact that, in a purchase under the direction of the Court, he did not incur as much responsibility as in a private purchase:—

*Held*, therefore, that the scale fee was properly chargeable. *Re MERCHANT TAYLORS COMPANY*

[30 Ch. D. 28, 54 L. J. Ch. 867, 52 L. T. 775, 33 W. R. 693 (C.A.)]

8. — *Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44)—*G. O., Dec. 1882, Sched. I., Part I., r. 11—Mortgage—Negotiation Fee—“Arranging and obtaining” Loan.* *Re WEDDALL, PARKER AND PARKER* — — — **W. N. (1884) 217**

9. — *Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44), s. 7—*General Order, August, 1882, cl. 6—Pending Business.* By an agreement for the sale of land, entered into in June, 1882, the purchaser agreed to pay the vendor's costs of making out and verifying his title. In the first instance a country solicitor acted for the vendor, but his employment ceased before the end of 1882, and from the 11th April, 1883, the vendor employed a London firm to act for him in the matter:—*Held*, by Pearson, J., that the London solicitors could only claim costs under Part I. of Sched. I. of the General Order of 1882, although the agreement was entered into before the order came into operation. *Re Lacey* (25 Ch. D. 301, 53 L. J. Ch. 287, 49 L. T. 755, 32 W. R. 293) followed. *Re DENNE AND SECRETARY OF STATE FOR WAR; or, SECRETARY OF STATE FOR WAR AND DENNE* 54 L. J. Ch. 45, 51 L. T. 657, 33 W. R. 120, **W. N. (1884) 206**

10. — *Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44), s. 7—*General Rules, 1881, r. 2 (a), (b), (c); Sched. I., Part II.—Pending Business—Negotiations for Lease.* Negotiations for a lease were carried on through the lessor's solicitor for two years before the rules under the Solicitors' Remuneration Act, 1881, came into operation. After they came into operation terms were come to, and a lease executed. The solicitor in his bill charged for the negotiations, and also charged the amount fixed by Sched. I., Part II., to the rules, as remuneration "for preparing, settling, and completing lease and counterpart." The Taxing Master disallowed all the items for negotiations, and Mr. Justice Chitty affirmed his decision. The solicitor appealed:—

*Held*, by the Court of Appeal, that though the business had been commenced before the rules came into operation, the taxation must be conducted according to the rules, the solicitor not having declared his election to the contrary.

Whether he might on the rules coming into operation have effectually declared such election, *quære*.

*Held*, further, that having regard to rule 2, the amount fixed by Sched. I., Part II., included the

**III. SOLICITOR—BILL OF COSTS—continued.**

charges for negotiations, and that the appeal must be dismissed. *Re FIELD* — — — **29 Ch. D. 608, [54 L. J. Ch. 661, 52 L. T. 480, 33 W. R. 504, 553; 49 J. P. 613 (C.A.)]**

11. — *Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44), ss. 2, 7—*G. O., Aug. 1882, ss. 2, 6—Pending Business—Conveyancing Business in an action—Preparation of Contract.*

*Held*, by Pearson, J., that the above General Order applies to the costs of business begun before, but concluded after, the order came into operation, the taxation taking place afterwards. *Re Field* (*supra*) followed.

*Held*, further, that the order applies to the costs of conveyancing business in an action. *Stanford v. Roberts* (26 Ch. D. 155, 53 L. J. Ch. 338, 50 L. T. 147, 32 W. R. 404, 48 J. P. 692) followed.

But *held*, that in the case of a contract for sale prepared by the purchaser's solicitor, the scale fee fixed by Part I. of Sched. I. does not apply, and that, therefore, the solicitor is entitled to charge for that preparation in addition to the scale fee.

*Re Lacey & Son* (25 Ch. D. 301, 53 L. J. Ch. 287, 49 L. T. 755, 32 W. R. 293) distinguished. *FLEMING v. HARDCASTLE* 52 L. T. 851, 33 W. R. [776, **W. N. (1885) 106**

12. — *Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44)—*General Order, August, 1882, Sched. II.—Perusing Abstracts.* Upon the construction of Sched. II. of the General Order (containing scales of charges) made in pursuance of the Solicitors' Remuneration Act, 1881, abstracts of title are not included in the words "deeds, wills, and other documents," the charge for perusing which is therein fixed at 1s. per folio; but the old scale of 6s. 8d. for perusal of every three brief sheets of eight folios each remains unaltered. *Re R. A. PARKER AND OTHERS* — — — **29 Ch. D. 199, [54 L. J. Ch. 959, 52 L. T. 686, 33 W. R. 541]**

13. — *Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44), s. 2 (c)—*Sale in Partition Action—Conveyance—G. O., Aug., 1882, r. 2.* On a sale in a partition action of an estate vested in tenants in common, the parties other than he who has the conduct of the sale are entitled to have the conveyance perused on their behalf by separate solicitors, and the costs thereby incurred are properly chargeable as costs in the action under r. 2 (c) of the above order. Decision of Bacon, V.C., reversed. *HUMPHREYS v. JONES* 31 Ch. D. 30, 55 L. J. Ch. 1, [53 L. T. 482 (C.A.)]

14. — *Solicitors' Remuneration Act, 1881* (44 & 45 Vict. c. 44)—*G. O., Aug., 1882, Sched. I., Part II., Sched. II., r. 2 (c)—Taxation.* H., a solicitor, having been instructed by W. to prepare a building agreement of certain premises, it was duly prepared and executed in Aug., 1881. The agreement provided that the lease should be according to the terms set out in the schedule to the agreement. In 1883, W. instructed H. to prepare the lease, and it was prepared according to the terms in the schedule to the agreement, and afterwards executed. H. then sent in to W. a bill of costs, which contained an item of £17 for the costs of preparing the agreement in 1881, and another item, under date June, 1883, in these words: "Re lease, &c. . . . To costs of preparing, engrossing, executing, and completing lease and counterpart

**III. SOLICITOR—BILL OF COSTS—continued.**

as per Sched. I. of Solicitors' Remuneration Act, £59 10s." Then followed an item of £23 15s. for stamps, and £6 12s. 9d. for the costs of mortgagees who concurred in the lease. The taxing-master, thinking that part of the work charged for in the £59 10s. had already been charged for in the item for preparing the agreement, taxed £20 off the £59 10s., and directed a detailed bill of costs for the preparation of the lease to be brought in, but did not tax the detailed bill, which amounted to £56 14s., including the above-mentioned items of £23 15s. and £6 12s. 6d. On a summons to review the taxation; *Held*, by Chitty, J., that the master was wrong in taxing off £20 and allowing the scale charges of Sched. I. Part 2, of the Solicitors' Remuneration Act, 1881, and that the matter must go back to him with a direction to tax the detailed bill. *Re HICKLEY AND STEWARD* 54 L. J. Ch. [608, 52 L. T. 89, 33 W. R. 320, W. N. (1885) 15

15. — *Substantial part improperly described*—G & 7 Vict. c. 73, s. 37.] *Held*, by Denman, J., that where a substantial part of a solicitor's bill of costs is properly set out and described, but a substantial part is improperly set out and described, the whole bill is not bad, but the solicitor can recover in respect of the items properly described.

*Dicta in Haigh v. Ousey* (7 E. & B. 578, 29 L. T. (O.S.) 89) followed. *BLAKE v. HUMMELL*

[51 L. T. 430, 1 C. & E. 345

16. — *Taxation after Payment*—"Special Circumstances"—*Solicitors Act*, 1843 (6 & 7 Vict. c. 73), s. 41.] Mortgagees for £2000 were proceeding to sell the mortgaged estates. On the 1st of September, S., the mortgagor's solicitor, wrote to B., the mortgagee's solicitor, informing him that he had found a transferee, and proposing to complete the transfer on the 3rd. B. wrote back proposing the 10th for completion, and afterwards postponed the appointment to the 13th. His bill of costs, which amounted with surveyor's charges to more than £450, was received by S. on the 9th. On that day S. wrote to B. saying that the bill of costs appeared excessive, and would require to be carefully gone into, but did not propose to postpone the completion. On the 12th S. took with him a written protest against the bill, and had two interviews with B., at which arrangements were made for completion. S. did not mention the subject of costs at either interview, but deposed that he had intended to do so at a third appointment on the same day, which B. did not keep. On the 13th the parties met, the transfer was completed, and the bill of costs paid, B. refusing to part with the deeds unless it was paid. S. delivered his written protest, and it appeared that B. expressed willingness to reconsider his bill if any item were shewn to be erroneous, but said nothing to the effect that it was to be treated as open to taxation. The mortgagor applied for taxation, alleging pressure and overcharge, but not referring to any specific items of overcharge. Bacon, V.C., made an order for taxation, and B. appealed:—

*Held*, by Cotton and Fry, L.JJ., (*diss.* Bowen, L.J.), that the order for taxation must be discharged, for that as the shortness of the interval between the delivery of the bill and the time fixed for completion did not arise from any act of the mortgagee's solicitor, but was owing only to the

**III. SOLICITOR—BILL OF COSTS—continued.**

desire of the mortgagor for speedy completion, there was no pressure such as to justify taxation, though the case would have been otherwise if the mortgagee had been pressing for an early settlement:—

*Held*, by Bowen, L.J., that the Solicitors Act, 1843, s. 41, authorizes taxation after payment where there are special circumstances which, in the opinion of the Judge, require the same; that there is no inflexible rule that the special circumstances must be pressure with overcharge, or overcharge so gross as to amount to fraud; and that, in the present case, as the parties did not at completion treat the bill as finally settled, and B. had taken advantage of the inconvenience which a postponement of the settlement would have occasioned to the mortgagor, there were special circumstances justifying taxation:—

*Held*, by Bowen, L.J., that where a bill is so large as to be redolent of overcharge it is not necessary that specific items of overcharge should be pointed out:—

*Held*, by Fry, L.J., that though the bill appeared excessive, the Court could not treat overcharge as shewn, unless specific items were pointed out on which it could exercise its judgment. *In re Boycott* [29 Ch. D. 571, 52 L. T. 482, 34 W. R. 26 (C.A.)

17. — *Taxation after payment—Application by cestui que trust—Special circumstances—Solicitors Act*, 1843 (6 & 7 Vict. c. 73), ss. 39, 41.] *Quære*, whether the provision in s. 41 of the above Act as to the necessity of shewing "special circumstances" on an application for taxation of a bill of costs after payment applies in the case of an application by a *cestui que trust* under s. 39 for a taxation of a bill paid by trustees.

Whether the provision applies or not, the Court, on application under s. 39, has a discretion as to ordering taxation, even where special circumstances are shewn.

Where overcharges of only £2 or £3 were shewn, and no pressure or fraud was proved, the Court declined to exercise its discretion by ordering taxation. *Re CHOWNE* - - 52 L. T. 75 (C.A.)

18. — *Taxation after Payment—Mutual mistake of Law—Mortgage to secure Balance of Purchase-money—Investigation of Mortgagor's Title—Solicitors Act*, 1843 (6 & 7 Vict. c. 73), s. 41—*Solicitors' Remuneration Act*, 1881—G. O., 1882, *Sched. I. Part I.*] When part of the purchase-money is allowed to remain on mortgage of the property sold, the solicitor of the vendor-mortgagee cannot charge the scale fee under the above general order for investigating the mortgagor's title.

Where a fee of £95 was charged for such investigation, under a mistake, common to both parties, that the scale applied, the Court refused to accede to an application for taxation after payment. *Re GLASCODINE AND CARLYLE* 52 L. T. 781

19. — *Taxation—Agency Charges—Country Solicitor and London Agent—Charge for Counsel's Fees not yet paid.*] London solicitors acted as agents in London for a country solicitor during the years 1877 to 1884 inclusive. The agency was terminated in 1884. During the period of the agency the London agents delivered to the country solicitor, generally once a year but sometimes

**III. SOLICITOR—BILL OF COSTS—continued.**

oftener, detailed bills of the charges which they claimed against him in each of the actions or other matters in which they had acted for him. They also delivered to him a cash account for each year, in which he was credited with all payments made by him to them, and all moneys received by them on his behalf, and was debited with all payments made by them to him or on his behalf, and with the gross amounts of the several bills of charges which had been delivered. The balance appearing to be due from him on each account, but the last, was carried on to the next account. Some of the actions continued during several years, and one of them (*Rhodes v. Jenkins*) continued during the whole period of the agency, and was not then concluded. After the close of the agency the country solicitor claimed a taxation of the whole of the bills:—

*Held*, by Pearson, J., that only those bills which had been delivered within twelve months could be taxed, and that the earlier bills must be treated as having been settled in account and thus paid.

*Held*, by the Court of Appeal, that the bills of costs in *Rhodes v. Jenkins* (to which the appeal was limited) notwithstanding the fact that all the costs in it had not yet been taxed, being in fact separate bills could not be treated as one continuous bill at the option of the country solicitor.

The London agents had charged the country solicitor with fees to counsel which had not yet been paid, but the country solicitor had not supplied them with sufficient funds to pay the fees:—

*Held*, by Pearson, J., that this charge was not a circumstance sufficient to justify a taxation. *In re NELSON, SON, & HASTINGS* — 30 Ch. D. 1, [54 L. J. Ch. 998, 53 L. T. 415, 33 W. R. 645 (C.A.)]

20. — *Taxation—“Assignee” of Costs*—6 & 7 Vict. c. 73, s. 37.] Whether an assignee of costs due to a solicitor is such an “assignee” of the solicitor as is, under s. 37 of the Act 6 & 7 Vict. c. 73, entitled to obtain a taxation of the costs, *quære*.

But, if an assignee of costs can obtain a taxation, he cannot obtain an order of course to tax one bill of costs out of several, even if that bill only has been assigned to him. An order to tax one bill out of several alone can only be obtained by means of a special application. *Re WARD* 28 Ch. D. [719, 54 L. J. Ch. 508, 33 W. R. 783]

21. — *Taxation—Costs of Taxation—Solicitor to Trustee in Bankruptcy*—6 & 7 Vict. c. 73, ss. 37, 38, 39.] Under an ordinary reference to tax the costs of the solicitor to a trustee in bankruptcy the taxation is regulated by the practice of the Court of Bankruptcy, and the provisions of the Act 6 & 7 Vict. c. 73, have no application.—There is no rule in the Court of Bankruptcy that, if on such a taxation the amount of the solicitor's bill is reduced by more than one-sixth, he is to pay the costs of the taxation. *Ex parte MARSH. Re MARSH* [15 Q. B. D. 340, 54 L. J. Q. B. 557, 53 L. T. 418]

22. — *Taxation—Costs of Taxation—Offer by Solicitor to reduce the amount—Certifying special Circumstances*—6 & 7 Vict. c. 73, s. 37.] C., a solicitor, sent in to executors a bill of costs for £83, writing at the foot, “say £78,” and the £78 was paid. The residuary legatee obtained an

**III. SOLICITOR—BILL OF COSTS—continued.**

order to tax the bill, which was taxed at £66, being more than five-sixths of £78, but less than five-sixths of £83. The residuary legatee objected to certain items as excessive, and the taxing master considered that they were excessive; but held, that as the executors had authorized them and admitted their liability to pay them, the residuary legatee could not have them reduced:—

*Held*, by Chitty, J. (53 L. J. Ch. 927, 32 W. R. 876), that the taxing master was right in allowing these items; that the bill must be treated as a bill for £78, from which less than one-sixth had been taxed off, and that the solicitor was entitled to the costs of the reference.

P., a solicitor, delivered a bill for £362, but stated that he would only claim £320, and the £320 only was entered in the cash account which he delivered to his clients. The clients obtained an order for taxation. The taxing master taxed the bill at £280, being more than five-sixths of £320, but less than five-sixths of £362, and certified that he had allowed the solicitor the costs of the reference, as he considered that since he had never claimed more than £320, the difference of £42 between this sum and the amount of the whole bill ought to be deducted from the sums taxed off, thus reducing them to £40, which was less than a sixth of the sum he had claimed:—

*Held*, by Pearson, J. (53 L. J. Ch. 871, 50 L. T. 585, 32 W. R. 901), that the solicitor must pay the costs of the reference.

*Held*, on appeal, that in C.'s case the bill delivered, within the meaning of 6 & 7 Vict. c. 73, s. 37, was a bill for £83, and that, as more than one-sixth had been taxed off, the solicitor must, according to that section, pay the costs of the reference; the case not coming within the proviso giving the Court a discretion where special circumstances are certified.

*Held*, in P.'s case, that special circumstances were certified, so as to give the Court a discretion as to the costs of the reference, but that the special circumstances were not such as to induce the Court to depart from the general rule that the costs of the reference should follow the event of the taxation, and that in this case also, more than one-sixth having been taxed off the £362, the solicitor must pay the costs of the reference. *Re CARTHEW. Re PAULL* 27 Ch. D. 485, 54 L. J. Ch. 134, 51 L. T. [436, 32 W. R. 940 (C.A.)]

23. — *Taxation—Costs of Third Counsel on Appeal.*] The rule laid down in *Re Blyth and Fanshawe* (10 Q. B. D. 207, 52 L. J. Q. B. 186, 47 L. T. 610, 31 W. R. 283) applies to the costs of employing a third counsel on the hearing of an appeal, the expense being an unusual one.—Therefore even if a solicitor has obtained his client's sanction to the employment of a third counsel on an appeal, the costs will not be allowed on taxation between solicitor and client, unless the solicitor has also explained to the client that the costs will probably not be allowed as between party and party, and that, even if he succeeds on his appeal, he may have to pay the costs of the third counsel himself. Decision of Field and Manisty, JJ. (15 Q. B. D. 252, 52 L. T. 819, 33 W. R. 749) affirmed. *Re BROAD AND BROAD* 15 Q. B. D. 420, 54 L. J. [Q. B. 573, 52 L. T. 888 (C.A.)]

**III. SOLICITOR—BILL OF COSTS—continued.**

**24. — Taxation—Ex parte Order—Special Agreement—Non-professional Work—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8.]** Where an agreement has been made for the remuneration of a solicitor and the solicitor alleges that the remuneration was for non-professional work, the person chargeable cannot obtain the common *ex parte* order for the delivery and taxation of the bill of costs. The Solicitors' Remuneration Act, 1881, s. 8, has made no difference in the practice in this respect. *Re* **INDERWICK**

[**25 Ch. D. 279, 54 L. J. Ch. 72, 50 L. T. 221, 32 W. R. 541 (C.A.)**]

**25. — Taxation—Mortgage—Mortgagor and Mortgagee—Trustee—Profit costs.]** Where one of a body of mortgagees is a solicitor and acts as such in enforcing the mortgage security, he is entitled to charge profit costs against the mortgagor, whether the mortgagees are trustees or not. If in such a case the mortgagor, in applying for an order to tax the bill of the solicitor mortgagee, desires to raise the objection to profit costs, he should state his objection in his petition for taxation. *Re* **DONALDSON**

**27 Ch. D. 544, 54 L. J. Ch. 151, 51 L. T. 622**

**26. — Taxation—Order for—Service—Execution—Fi. Fa.—O. XLII. rr. 1, 17—O. LXVII.]** A. obtained a common order for taxation of the costs of his former solicitor B., the order directing payment by A. to B. of the amount of the taxed costs within twenty-one days after the service of the order and of the certificate of taxation.

The order and certificate were served, not on A. personally, but on the solicitor then acting for him in the taxation. A. failed to pay the amount within twenty-one days after service of the order and certificate on the solicitor, and B. applied for the issue of a writ of *fi. fa.* against A. for the amount; but the officer of the Court refused to issue the writ, on the ground that A. had not been personally served with the order and certificate. *Held*, by Pearson, J., that B. might have the writ at his own risk, without service of the order and certificate on A. personally. *Re* —, **A SOLICITOR**

**33 W. R. 131, W. N. (1884) 217**

— Petitioner out of jurisdiction—Security for costs.

*See* **PRACTICE—COSTS. 15.**

— Scotch law—Agreement.

*See* **SCOTCH LAW. 7.**

— Solicitor—Executor—Will—Direction as to professional charges.

*See* **TRUSTEE—COSTS AND CHARGES. 4.**

— Victoria, law of—Order by Court to deliver bill.

*See* **COLONIAL LAW. 14.**

**IV. SOLICITOR—CERTIFICATE—40 & 41 Vict. c. 25, s. 23, and Sched. II.]** Where a solicitor has neglected for a whole year to renew his certificate, the Master of the Rolls alone has power to order the registrar of certificates (the Incorporated Law Society) to grant him a certificate for the current year. The right of a solicitor who has neglected to renew his certificate to apply for a fresh one is not a "right acquired or accrued" within 40 & 41 Vict. c. 25, s. 23, proviso (B). *Ex parte* **INCORPORATED LAW SOCIETY. Re** **CHAFFERS**

**15 Q. B. D. 467**

**V. SOLICITOR—LIABILITIES—London Agent—Misappropriation by—County Solicitor held responsible. ASQUITH v. ASQUITH**

**W. N. (1885) 31**

**2. — Negligence—Proceeding by Pauper—O. XVI., rr. 30, 31.]** The solicitor of an appellant, who was suing *in formâ pauperis*, had served a respondent with notice of the appeal; although the case against that respondent had been abandoned at the hearing below, and no relief was asked against him on the appeal. On these facts the Court of Appeal gave leave to move against the solicitor before the Court of Appeal to shew cause why he should not be personally liable to pay the costs of the respondent's appearing on the appeal. **MARTINSON v. CLOWES**

**52 L. T. 706, 33 W. R. 555 (C.A.)**

**3. — Negligence.]** A solicitor was consulted by a lessee of premises with reference to the building of a wall, to the erection of which on the demised premises his lessor objected. The lease was shewn to the solicitor. The solicitor made no inquiries as to whether there was any objection to building the wall, other than what might be contained in the lease. The land was subject to a restrictive covenant against any such erection in favour of the original vendors of the freehold, and the wall, after erection, had to be pulled down:—*Held*, that the solicitor had been guilty of no negligence. **PITMAN v. FRANCIS**

**1 C. & E. 355**

— Delay—Administration—Disallowance of costs.

*See* **PRACTICE—COSTS. 7.**

— Firm of solicitors.

*See* **PARTNERSHIP. 6, 7.**

— Order on solicitor personally to pay costs.

*See* **PRACTICE—STAYING PROCEEDINGS. 1.**

— Order on solicitor personally to pay costs—Appeal.

*See* **PRACTICE—APPEAL. 7.**

**VI. SOLICITOR—LIEN—Charge—Property "recovered or preserved" in Action—Solicitor discharged before Trial—23 & 24 Vict. c. 127, s. 28.]** A solicitor, through whose instrumentality property has been recovered or preserved in an action, is entitled under the 28th section of the Attorneys and Solicitors Act, 1860, to a declaration of charge upon such property, although his client may have discharged him before the trial of the action.

In such a case his charge will be subject to the lien for costs of the client's solicitor for the time being.

Money paid into Court as a security for the costs of a party to an action is not in case by the success of the party it becomes repayable to him, property "preserved" in the action within the meaning of the Act. So *held*, by Kay, J. *Re* **WADSWORTH. RHODES v. SUGDEN**

**29 Ch. D. 517, 54 L. J. Ch. 638, 52 L. T. 613, 33 W. R. 558**

**2. — Charge—Property recovered or preserved—23 & 24 Vict. c. 127, s. 28.]** The Defendant in an action for dissolution of partnership and winding-up of the partnership business, delivered a defence and counter-claim, claiming certain remedies against his co-partners. At the trial the parties agreed to a compromise, and an order was made directing the taxation of the costs of all parties, and staying all proceedings except for the purpose of enforcing the agreement and that order. The

**VI. SOLICITOR—LIEN—continued.**

agreement, which was set out in a schedule to the order, provided for the dissolution of the partnership, the sale of the partnership property, and that all costs of the parties should be paid out of the estate. Subsequently the parties agreed that a sale of a certain part of the partnership property should be rescinded, that all litigation should be put an end to, and the business carried on as before the action. The Defendant's solicitor applied for an order charging his costs on the shares both of the Plaintiffs and Defendant, in the partnership property, or, in the alternative, on the Defendant's share:—

*Held*, that there was nothing on which the solicitor could have a lien, as he had failed to shew that any property had been recovered or preserved in the action.

Order of Kay, J. (53 L. T. 135, W. N. (1885) 169) discharged. *ROWLANDS (or ROWLAND) v. WILLIAMS* - - - W. N. (1885) 194 (C.A.)

3. — *Charge on Property recovered or preserved—Solicitors employed to oppose Winding-up Petition—Solicitors' Act*, 1860 (23 & 24 Vict. c. 127), s. 28.] *Re UNITED SHEPHERDS' WHEAL ROSE Co.* - - - W. N. (1885) 15

4. — *Charging Order for Costs—23 & 24 Vict. c. 127, s. 28—Time for Raising Costs.*] A decree for administration of a testator's estate was made at the suit of an infant who was entitled to a contingent reversionary share in the estate. R. was solicitor for the Plaintiff and for J. and A., two of the persons entitled to the other shares. After decree he ceased to be solicitor for these parties, and obtained an order directing taxation of his costs as their solicitor in the action, including the costs of the application, and charging their shares in the estate with the payment of such costs, with liberty to apply to have them raised. He now, the cause not yet having been heard for further consideration, applied to have the costs raised by a sale of the shares charged:—

*Held*, affirming the decision of Bacon, V.C., that the application was premature, and that no order ought to be made for raising the costs until the cause was heard for further consideration. *In re GREEN. GREEN v. GREEN* 26 Ch. D. 16, 54 L. J. Ch. 54, [50 L. T. 513, 32 W. R. 373 (C.A.)]

5. — *Charging Order—Garnishee Summons—Priority—23 & 24 Vict. c. 127, s. 28.*] The proceedings of a *fi. fa.*, issued on behalf of the successful Plaintiff in an action, were attached in the hands of the sheriff by a garnishee summons from a county court to answer a judgment obtained against the Plaintiff in that court. The Plaintiff's solicitor in the action, who had received notice of the service of the garnishee summons, subsequently obtained an order under 23 & 24 Vict. c. 127, s. 28, charging the fund recovered with costs of the action remaining due to him:—*Held*, that such order was rightly made, and the solicitor's claim was entitled to priority over the claim of the judgment creditor of the Plaintiff under the garnishee summons. Decision of the Queen's Bench Division (13 Q. B. D. 543, 53 L. J. Q. B. 527, 33 W. R. 123, 1884 Dig. col. 477) affirmed. *Ex parte ADAMS. DALLON v. GARROLD* .. .. 14 Q. B. D. 543, [54 L. J. Q. B. 76, 52 L. T. 240, 33 W. R. 219 (C.A.)]

6. — *Company's Books—Articles—Com-*

**VI. SOLICITOR—LIEN—continued.**

*panies Act*, 1862 (25 & 26 Vict. c. 89), s. 32.] The solicitor of a company cannot acquire a lien for costs upon such books of the company as under the articles of the company or the provisions of the Companies Acts ought to be kept at the company's registered office. So *held*, by Kay, J.

*Re Capital Fire Insurance Co.* (24 Ch. D. 408, 53 L. J. Ch. 71, 49 L. T. 697, 32 W. R. 260) observed upon. *Re ANGLO-MALTESE HYDRAULIC DOCK Co.* 54 L. J. Ch. 730, 52 L. T. 841, 33 W. R. [652, W. N. (1885) 84]

7. — *Discharge of Lien—Payment into Court.*] The Court has jurisdiction, upon payment into Court, or giving security for a sum sufficient to answer the solicitor's demand, to order the delivery up by a solicitor, who has been discharged, of the client's papers, where retention by the solicitor would embarrass the client in the prosecution or defence of pending actions. *Re GALLAND.* [34 W. R. 58, W. N. (1885) 185]

(Varied on appeal by consent, 34 W. R. 158, W. N. (1885) 224.)

8. — *Loss of Possession—Debt barred by Statute—Administration Action.*] A firm of solicitors had a lien for costs upon certain documents in their possession. The partnership was dissolved and the firm was reconstituted, shortly after which the documents in question were removed from the office of the firm by a former partner without the consent or permission of the firm.

*Held*, by Kay, J., that the lien was not destroyed.

A lien is not barred by the fact that the debt in respect of which the lien is claimed is barred, and may be enforced for the purpose of obstructing an administration action if the debtor declines to waive his rights under the statute. *Re CARTER. CARTER v. CARTER* 53 L. T. 630, 34 W. R. 57, W. N. (1885) 184

9. — *Set-off for Damages or Costs—Solicitor's Lien—Cross Judgments in separate Actions—Order LXV., r. 14.*] The Court, upon an application to set-off cross judgments in distinct actions are entitled, notwithstanding Order LXV., r. 14, to order that the set-off shall be subject to the lien for costs of the solicitor of the opposite party—for assuming that r. 14 applies to a set-off in distinct actions, it leaves the Court a discretion to allow the set-off, either subject to or notwithstanding the solicitor's lien, and if it has no application the Court have the same discretion by the practice previously to Reg. Hil. Term, 1853, r. 63, which, since the repeal of that rule by the new rules, is revived. *EDWARDS v. HOPE* - - - 14 Q. B. D. 922, [54 L. J. Q. B. 379, 53 L. T. 69, 33 W. R. 672 (C.A.)]

— *Action by debenture holders—Costs—Priority. See COMPANY—DEBENTURES. 1.*

**VII. SOLICITOR—PRIVILEGE—Production of Documents—Evidence.**] Judgment having been given for the Plaintiff in an action against a married woman, an inquiry was directed before the master as to her separate estate. The solicitor to the trustees of the Defendant's marriage settlement was asked the names and addresses of the trustees, and declined to answer, and was called upon to produce the settlement deed, and declined to produce it.

*Held*, affirming the judgment of Mathew, Cave, and Wills, JJ., (1) that the question as to the names and addresses of the trustees was not a question as

**VII. SOLICITOR—PRIVILEGE—continued.**

to the contents of a written document, and could properly be asked, and that, in answering it, the solicitor would not be disclosing any confidential communication, and therefore he was bound to answer:

(2) that, as the Defendant could not object to the production of the deed of settlement, the solicitor was bound to produce it. *Ex parte Campbell, Re Cathcart* (L. R. 5 Ch. 703, 23 L. T. 289, 18 W. R. 1056) followed. *BURSILL v. TANNER*

[16 Q. B. D. 1, 55 L. J. Q. B. 53, 53 L. T. 445, [34 W. R. 35 (C.A.)]

— Privileged communication.

See PRACTICE—DISCOVERY—INTERROGATORIES. 5.

— Privileged communication—Criminal law.

See EVIDENCE. 12.

**VIII. SOLICITOR—RETAINER—Joint Retainer of Firm as Solicitors for Three Co-defendants—Solicitors declining to act further for one of Defendants, but continuing to act for the rest.]** *Re FLINT. COPPOCK v. VAUGHAN* W. N. (1885) 163

— Corporation—Contract not under seal.

See HIGHWAY. 1.

**IX. SOLICITOR—STRIKING OFF ROLL—**

*Jurisdiction of Court of Appeal.*] From the evidence given by a solicitor in an action in the Court of the County Palatine of Lancaster he appeared to have been guilty of gross misconduct in his character of solicitor as to one of the mortgages to which the action related. The Plaintiffs in the action having appealed, the conduct of the solicitor came under the consideration of the Court of Appeal, who directed the official solicitor to take proceedings. The official solicitor accordingly moved in the Court of Appeal for an order calling on the solicitor to explain his conduct, or that he might be struck off the roll:—

*Held*, that the Court of Appeal had jurisdiction to entertain the application, although not brought before them by way of appeal.

The solicitor had not taken out his certificate for several years, and did not take any notice of the application. The Court, under the special circumstances of the case, did not think fit to strike him off the roll or suspend him, but made an order restraining him from applying to renew his certificate without the leave of the Court. *Re WHITEHEAD* 28 Ch. D. 614, 54 L. J. Ch. 796, [52 L. T. 703, 33 W. R. 601 (C.A.)]

**X. SOLICITOR—UNQUALIFIED—Acting as a Solicitor—Attachment for Contempt—6 & 7 Vict. c. 73, s. 2—23 & 24 Vict. c. 127, s. 26.]** Every person who acts as a solicitor contrary to s. 2 of 6 & 7 Vict. c. 73, is liable to attachment for contempt of Court under 23 & 24 Vict. c. 127, s. 26, whether he so acts in the name of any other person or in his own name, unless such person be duly qualified. Although the Court will generally adopt the findings of the master as to such conduct, his report is not conclusive. *Re WALTER SIMMONS*

[15 Q. B. D. 348, 53 L. T. 147, 33 W. R. 706, [49 J. P. 740]

2. — *Pretending to be Solicitor—Penalty—Notice as to small Debt—37 & 38 Vict. c. 68, s. 12.]* S., a partner in a firm of coal merchants, wrote to A., who owed the firm for coals, a notice signed by

**X. SOLICITOR—UNQUALIFIED—continued.**

himself, headed "Final notice before proceeding in County Court. Unless you pay the sum of 22s. 6d. to the firm of, &c., I shall proceed against you under the above Act."

*Held*, by Mathew and Day, JJ., that the justices were wrong in convicting S. of pretending to be a solicitor contrary to the above section. *SYMONDS v. INCORPORATED LAW SOCIETY* - 49 J. P. 212

3. — *Pretending to be a Solicitor—Notice to Pay Debt by Agent of Creditor—Demanding more than Debt—37 & 38 Vict. c. 68, s. 12.]* B., an agent, who used to issue County Court summonses for people, was authorised by V. to write to a debtor of V. for payment. B. sent a notice, signed by himself, in these words: "County Courts. Unless the sum of £1 15s. 6d. due to V. is paid, I shall proceed against you under the above Acts." The debt due to V. was really only £1 6s. B. being summoned under the above section, *held*, by Mathew and Smith, JJ., that the magistrate was right in dismissing the summons, as there was no evidence that B. pretended, &c., to act as a solicitor. *INCORPORATED LAW SOCIETY v. BEDFORD* 49 J. P. 215

**SOLICITOR—Agreement by, of promoter of company—Separate undertaking.**

See COMPANY—PROMOTERS. 1.

— Duties—Mortgage by client to solicitor—Power of sale.

See MORTGAGE—POWER OF SALE. 2.

— Nomination of—Administration action.

See EXECUTOR—ACTIONS. 11.

— Right of audience—Bankruptcy appeal from County Court.

See BANKRUPTCY—APPEAL. 8.

— Right of audience—Examination of debtor.

See BANKRUPTCY—EXAMINATION. 2.

— Trustee—Appointment.

See TRUSTEE—APPOINTMENT. 2.

**SOLICITOR AND CLIENT COSTS—Bankruptcy Proceedings.**

See BANKRUPTCY—COSTS. 2.

**SOLICITORS' REMUNERATION ACT, 1881.**

See SOLICITOR—BILL OF COSTS. 6-14, 24.

**SPECIAL CASE—Power to state—Railway Commissioners.**

See RAILWAY COMPANY. 14.

**SPECIAL VERDICT—Certiorari.**

See CRIMINAL LAW. 16.

**SPECIFIC PERFORMANCE—Agreement to make a Road—Requirements of Local Board inconsistent with agreed Specification—Public Health Act, 1875, s. 152.]** The B. company agreed to construct a road over the land of the Plaintiff, who was to grant the company a right of way over the road when completed, and to permit it to be declared a public highway by the local Board. The company were to make the road according to a plan and specification already approved by the local board, and to do all things necessary to carry out a resolution passed by the board that the road should, six months after completion to their satisfaction, be declared a public highway. After completion of the road in accordance with the specification, the board were advised that it did not comply with the above section, in not being flagged or lighted, and they withheld their sanction to its being de-



**SPECIFIC PERFORMANCE—continued.**

clared a public highway. The Plaintiff then brought an action claiming specific performance by the company of the agreement, on the ground that they had not done all things necessary to enable the board to declare the road a highway, and claiming damages.—

*Held*, by North, J., that, inasmuch as to compel the Defendants to make the road so as to conform with the provisions of the Act would be to enforce performance of terms at variance with the agreement and entirely outside the contemplation of the parties, specific performance could not be ordered.

Whether the Plaintiff would have been entitled to damages if any had been shewn, *quere*. SAUNDERS v. BRADING HARBOUR IMPROVEMENT CO.

[52 L. T. 426, W. N. (1885) 36]

2. — *Damages—Alternative Claim for Damages, Effect of—Amendment of Pleadings.* The Plaintiff by his statement of claim claimed specific performance of a contract by which he agreed to sell and the Defendant agreed to purchase the lease, goodwill, fixtures, and stock-in-trade of a business; the Plaintiff alleging that he was and always had been able and willing to perform the contract, but that the Defendant refused to perform the same. The statement of claim in the alternative claimed £100 as liquidated damages fixed by the contract for the refusal to perform the contract. The statement of defence alleged false representations by the Plaintiff as to the character of the business, and denied that the Plaintiff was able and willing to perform the contract. The Plaintiff, after the close of the pleadings, gave notice to the Defendant that, unless the Defendant completed the purchase within a week, he should re-sell the business, which he accordingly did. No amendment of the pleadings was then asked for by the Plaintiff, and the action went on to trial. At the trial before Bacon, V.C., the Plaintiff's counsel, admitting that the claim for specific performance must be abandoned, sought to recover the £100 as liquidated damages. He did not apply for any amendment of the pleadings. The Vice-Chancellor dismissed the action on the ground that the claim for specific performance failing through the Plaintiff's own act the alternative claim for damages must fail also:—

*Held*, on appeal (by Earl of Selborne, L.C., Brett, M.R., and Cotton, L.J.) affirming the decision of Bacon, V.C., that, in the absence of any amendment of the pleadings (which ought not at that stage of the action to be allowed), the action must be treated as one for specific performance with a claim for damages in the alternative as a substitute for specific performance, according to the practice existing before the Judicature Act in the Court of Chancery, and that the Plaintiff, having by his own act rendered specific performance impossible, was not in such action entitled to damages. HIPGRAVE v. CASE 28 Ch. D. 356, 54 L. J. Ch. 399, [52 L. T. 242 (C.A.)]

3. — *Undertaking—Application by Plaintiff for leave to do certain acts left undone by Defendant—O. XLII., r. 30.* The Defendant in an action for specific performance of an agreement to make a road gave, at the trial, an undertaking to complete the road. An order was subsequently made fixing a date by which the road was to be

**SPECIFIC PERFORMANCE—continued.**

completed. This not having been done, the Plaintiff moved, under the above rule, for an order that he might be at liberty to complete the road himself at the Defendant's cost:—

*Held*, by North, J., that the case did not fall within the rule; but, nevertheless, the Court would enforce the undertaking by permitting the Plaintiff to do the works, with liberty to apply that the Defendant should pay the expenses so incurred. MORTIMER v. WILSON - - - 33 W. R. 927

4. — *Vendor and Purchaser—Agreement for Sale of surplus Land—Vendor's Lien—Liberty to apply—Motion for Rescission—Costs.* HULL (MAYOR OF) v. MORTON - W. N. (1885) 130

— Action for—Default of pleading—Evidence of agreement.

See PRACTICE—MOTION FOR JUDGMENT. 1.

— Agreement for lease.

See LANDLORD AND TENANT—AGREEMENT. 1—3.

**SPECULATION**—Debtor guilty of rash and hazardous.

See BANKRUPTCY—COMPOSITION. 2, 3.

BANKRUPTCY—DISCHARGE. 3.

**STAKEHOLDER**—Indemnity to—Objection by claimant indemnifying to interpleader issue.

See INTERPLEADER.

**STAMPS.**

See REVENUE. 9—12.

**STANNARIES COURT**—Winding-up of cost book mine—Inspection of documents.

See COMPANY—COST BOOK COMPANY.

**STATEMENT OF CLAIM.**

See PRACTICE—PLEADINGS.

**STATEMENT OF DEFENCE.**

See PRACTICE—PLEADINGS.

**STATUTE**—*Statutory Duty—Private Act—Enforcement of rights under.* Where an Act of Parliament contains a provision for the special protection or benefit of an individual, he may enforce his rights thereunder by an action, without either joining the Attorney-General as a party, or showing that he has sustained special damage. DEVONPORT (MAYOR OF) v. PLYMOUTH, DEVONPORT AND DISTRICT TRAMWAYS CO. - 52 L. T. 161, [49 J. P. 405 (C.A.)]

— Construction—Private Act.

See POOR RATE. 4.

— Local—Repeal of general act by.

See LOCAL GOVERNMENT. 3.

**STATUTE OF FRAUDS.**

See FRAUDS, STATUTE OF.

**STATUTE OF LIMITATIONS.**

See LIMITATIONS, STATUTES OF.

**STATUTES**

See LIST OF STATUTES (at beginning of Digest.)

**STAY OF PROCEEDINGS.**

See PRACTICE—STAYING PROCEEDINGS.

**STOCK**—Gift of—Declaration of Trust.

See GIFT. 2.

— Injunction to restrain transfer of—Undertaking by married woman.

See PRACTICE—CHARGING ORDERS.

**STOCK—continued.**

—Transfer into joint names—Intention to benefit.  
See **ADVANCEMENT**. 4

**STOCK EXCHANGE—Bankruptcy of Broker—Shares bought for applicant—Deposited as security—Sale—Balance paid to trustee in Bankruptcy—Appropriation—Costs.** The bankrupts, stock-brokers, had been employed by the applicant to buy certain specific shares for him, and had been paid for the same. These shares were, with others, deposited by the bankrupts with B. as security for an advance. On the bankruptcy becoming known, B. sold the shares, reimbursed himself, and handed the balance to the trustee. Upon the applicants sending in a claim for the balance another claimant retired:—

*Held*, by Cave, J., that the money might be paid over to the applicant on the terms that his solicitor would give a personal undertaking to repay so much as the Court might order at any time within three years:—

*Held*, also, that the applicant's costs must be borne by him; since it would be unjust that the expense of enforcing his claim should be borne by the general body of the creditors. *Ex parte RANKART (or BANKART)*. *Re BLAKEWAY AND THOMAS* [52 L. T. 630, W. N. (1885) 64]

2. — *Sale of Bank Shares—30 & 31 Vict. c. 29, s. 1—Omission to specify Numbers—Brokers Right to Indemnity—Stock Exchange, Usage of.* The Defendant employed the Plaintiffs, who were stockbrokers on the Stock Exchange, to buy shares in a joint stock banking company. He had on many previous occasions employed the Plaintiffs to buy similar shares, and on none of those occasions did the contract or advice note forwarded to him specify the distinguishing numbers of the shares purchased. The Plaintiffs purchased the shares from a jobber on the Stock Exchange in the usual way, and forwarded to the Defendant a contract note in the usual form stating that the contract was made subject to the rules and regulations of the Stock Exchange. The contract was not made with reference to any distinguishing numbers of the shares, nor did the contract note specify any numbers. It is not the practice on the Stock Exchange to specify the numbers of the shares in dealing in bank shares. The Defendant before the settling-day wrote to the Plaintiffs repudiating the contract, on the ground that the numbers of the shares were not specified pursuant to 30 & 31 Vict. c. 29, s. 1. Notwithstanding such repudiation, the Plaintiffs completed the contract and paid for the shares.—By the rules of the Stock Exchange the committee only recognize the members of the Stock Exchange as the parties to contracts, and if a member does not carry out a contract he may be declared a defaulter and expelled from the Stock Exchange, and “no application, which has for its object to annul any bargain on the Stock Exchange shall be entertained by the committee unless upon an allegation of fraud or wilful misrepresentation.”

—The Plaintiffs sued the Defendant to recover the price of the shares paid by them:—*Held*, by Mathew, J., on the authority of *Read v. Anderson* (13 Q. B. D. 779, 53 L. J. Q. B. 532, 51 L. T. 55, 32 W. R. 950, 49 J. P. 4) that the Plaintiffs were entitled to recover. *SEYMOUR v. BRIDGE* 14 Q. B. D. 460, [54 L. J. Q. B. 347]

**STOCK EXCHANGE—continued.**

3. — *Sale of Bank Shares—Contract for—Omission to specify number of Shares—30 & 31 Vict. c. 29, s. 1—Broker's Right to Indemnity.* The Defendant instructed the Plaintiffs, stock-brokers of Bristol, to purchase for him shares in a joint stock banking company on the London Stock Exchange. The Plaintiffs gave directions accordingly to their London agents, brokers on the London Stock Exchange, who purchased the shares from jobbers on the Stock Exchange in the usual way, without having in the contract distinguishing numbers of the shares, it not being the practice on the London Stock Exchange to specify the numbers or otherwise to comply with 30 & 31 Vict. c. 29 (Leeman's Act), s. 1. By the rules of such Stock Exchange it is provided that the Stock Exchange shall not recognize in its dealings any other persons than its own members, such members, if they do not carry out contracts, being liable to be expelled from the Stock Exchange, and that no application to annul a contract shall be entertained by the committee of the Stock Exchange unless upon a specific allegation of fraud, or wilful misrepresentation. Before the settling day the Defendant repudiated the contract, but the committee of the Stock Exchange refused to annul the contract and therefore the Plaintiffs completed it, and paid the price of the shares. The Defendant was ignorant of the usage of the London Stock Exchange with regard to dealings in shares of banking companies, and did not know that the purchasing broker was by such usage bound to perform a contract for the purchase of banking shares, though void at law under Leeman's Act:—*Held*, affirming the decision of Grove, J. (14 Q. B. D. 467, 54 L. J. Q. B. 351), that the Plaintiffs were not entitled to recover from the Defendant the money paid by them as the price of the shares, since the usage of the Stock Exchange to disregard Leeman's Act, and to recognize as valid a contract which was made contrary to that Act, was unreasonable as against strangers who did not know it, and therefore was not binding on the Defendant. *PERRY v. BARNETT* [15 Q. B. D. 388, 54 L. J. Q. B. 466, 53 L. T. (1885) (C.A.)]

—Contract for payment of “Differences”—Wagering contract.  
See **CONTRACT**. 8, 9.

**STOP ORDER**—Injunction to restrain transfer of stock—Undertaking by married woman.  
See **PRACTICE—CHARGING ORDERS**.

**STOPPAGE IN TRANSITU**—End of transit—Goods bought by agent in England for foreign principal.  
See **SALE OF GOODS**. 2.

—Notice to Consignees to hold proceeds of goods.  
See **BILL OF EXCHANGE**. 6.

**STREAM**.  
See **WATER**.

**STREET**.  
See **HIGHWAY**.

—Obstruction by Railway.  
See **RAILWAY COMPANY**. 5, 11.

—Pavement—Expenses.  
See **METROPOLIS**. 7.

**STREET**—*continued.*

— Paving expenses—Liability of adjoining owners.  
See TOWNS IMPROVEMENT ACT.

— Property of Board of Works in—Telephone wire—Injunction.  
See METROPOLIS. 5.

— Public Health Acts.  
See PUBLIC HEALTH ACTS. 3, 7, 17.

**STRIKING SOLICITOR OFF THE ROLL.**  
See SOLICITOR—STRIKING OFF ROLL.

**SUBMISSION TO ARBITRATION**—Agreement to appoint valuers—Rule of Court.  
See ARBITRATION. 2.

**SUBSTITUTED SERVICE.**  
See PRACTICE—WRIT. 9, 11, 12.

**SUCCESSION DUTY**—Covenant by settlor for payment of a sum of money during life or after death.  
See REVENUE. 13.

**SUMMONS**—Bastardy.  
See BASTARDY.

— Determination of question at issue.  
See PRACTICE—CHAMBERS. 11.

— In chambers.  
See CHAMBERS.  
Refusal of Justice to issue—Discretion.  
See JUSTICES. 7.

**SUPERIOR AND VASSAL.**  
See SCOTCH LAW. 8, 9.

**SUPERVISION**—Winding-up under.  
See COMPANY—VOLUNTARY WINDING-UP. 6-8.

**SUPPORT**—*Lateral support of house by soil and building not contiguous.* A., B., and C. were the owners of three consecutively adjoining houses in a street. B.'s house intervened between those of A. and C. A.'s premises were destroyed by fire and rebuilt. After rebuilding, B.'s side wall separated from C.'s premises, the adjacent wall in which became cracked.

In an action by C. against A. for damages, evidence of architects was given to show that the crack was caused by the settling down of A.'s new building on soft clay, and drawing over with it B.'s premises; and, on the other hand, architects were produced on behalf of A., who proved that the rebuilding was properly executed, and attributed the separation, to an old settlement increasing gradually.

The jury, upon the question being submitted to them, found that A. was guilty of negligence; but the learned judge at the trial directed a verdict for A., being of opinion that there was no evidence of negligence:—

*Held*, that, as the evidence showed that the injury was caused by the rebuilding of A.'s premises, C. was entitled to maintain the action, even assuming the rebuilding to have been performed with due skill.

The principle of *Dalton v. Angus* (6 App. Cas. 740, 50 L. J. Q. B. 689, 44 L. T. 844, 30 W. R. 191) applied.

*Solomon v. Vintners' Co.* (4 H. & N. 585) distinguished. *LATIMER v. OFFICIAL CO-OPERATIVE SOCIETY* - - - 16 L. R. Ir. 305

**SUPPORT**—*continued.*

2. — Surface—Grant of Land reserving Coal—Subsequent Conveyance of Coal to another—Liability of latter to grantee for subsidence by mining. *CARLIN v. CHAPPEL* - 47 Amer. R. 722 (U.S.)

— Subsidence—Action—Limitation—Remoteness of Damage.  
See DAMAGES. 9.

**SURETIES**—Administration Bond—Amount.  
See ADMINISTRATOR. 1.

**SURETY.**  
See PRINCIPAL AND SURETY.

**SURRENDER**—Lease—Infant.  
See INFANT. 8.

**SURVEYOR**—*Remuneration—Custom.* No custom exists by which surveyors engaged in compensation cases on the compulsory purchase of property are entitled to be remunerated on a percentage of the sum awarded, according to Ryde's scale. *DEBENHAM v. KING'S COLLEGE, CAMBRIDGE* 1 C. & E. 438

**SURVIVORSHIP.**  
See WILL—CONSTRUCTION. 44-47.

— Joint banking account—Joint investments.  
See BANKER. 1.

## T.

**TACKING.**  
See MORTGAGE—PRIORITY. 10, 12.

**TAVERN.**  
See INN.

**TAXATION**—Bill of Costs.  
See SOLICITOR—BILL OF COSTS.

**TAXES.**  
See INLAND REVENUE.

— Covenant to pay—Construction.  
See COVENANT. 4.

**TELEGRAPH**—Telegraphic Address—Injunction—Jurisdiction.  
See TRADE NAME. 1.

**TELEGRAPH ACTS**—Suspending telephone wire over street—Consent of local authority.  
See METROPOLIS. 5.

**TELEPHONE COMPANY**—Rateable occupation—Overhead wires.  
See POOR RATE. 3.

— Wire across street—Injunction—Board of Works.  
See METROPOLIS. 5.

**TENANT.**  
See LANDLORD AND TENANT.

**TENANT FOR LIFE**—Powers of, of settled estate.  
See SETTLED LAND ACT.

**TENANT IN COMMON**—*Landlord and Tenant—Tenant by Sufferance—Use and Occupation—Ordinary Repairs—Contribution.* Where one tenant in common has by lease demised his interest to his co-tenant in common, if the tenant in common who was lessee continues in occupation as tenant at sufferance after the expiration of the lease, he will be liable in an action for use and occupation at the suit of his co-tenant in common who was lessor.—

**TENANT IN COMMON—continued.**

One tenant in common who expends money on ordinary repairs has no right of action against his co-tenant for contribution.—*Judgment of Pollock, B. (12 Q. B. D. 194, 50 L. T. 124, 32 W. R. 339, 48 J. P. 246, 1884 Dig. col. 486), affirmed. LEIGH v. DICKESON - 15 Q. B. D. 60, 54 L. J. Q. B. 18, [52 L. T. 790, 33 W. R. 538 (C.A.)]*

**TENANT IN TAIL—Disentailing Deed—Protector of Settlement—Annuitant—Fines and Recoveries Act (3 & 4 Will. 4, c. 74, s. 22.)** The person who is, within the above section, the "protector of the settlement," as being the "owner of the prior estate," to the estate tail, is the person who is beneficially entitled to the rents and profits. A freehold estate was devised to trustees for a term of ninety-nine years, if the testator's son M. should so long live, upon trust to manage the estate, and to pay thereout a yearly sum of £250 to M. for life, and, subject thereto, to pay the surplus of the rents and profits to the person for the time being entitled in reversion immediately expectant upon the term to the rents and profits. Upon the expiration, or sooner determination of the term, the estate was devised to the use of the testator's son H. for life, with remainder to H.'s son in tail male.

*Held*, by Pearson, J., that H. was the protector of the settlement.

*Re Dudson's Contract* (8 Ch. D. 628, 47 L. J. Ch. 632, 39 L. T. 182, 27 W. R. 179) applied.

*Re AINSLIE. AINSLIE v. AINSLIE. 54 L. J. Ch. 8, [51 L. T. 780, 33 W. R. 148]*

2. — **Disentailing Deed—Enrolment—Settlement—Mistake—Rectification—Jurisdiction—Fines and Recoveries Act (3 & 4 Will. 4, c. 74), ss. 40, 47.]** Having regard to sects. 40 and 47 of the Fines and Recoveries Act (3 & 4 Will. 4, c. 74), the Court has no jurisdiction to rectify, on the ground of mistake, a deed which has been enrolled as a disentailing assurance under the Act, although the rectification asked is not in the disentailing part of the deed, but in a resettlement added to it, which might have been effected by a separate unenrolled deed.

A testator, who died in 1836, devised his estates, subject to a prior limitation to A. for life, to the use of B. for life with remainder to the use of "the first and other sons of B. in tail," with remainders over. In 1878 by a deed enrolled as a disentailing assurance under the Fines and Recoveries Act (3 & 4 Will. 4, c. 74), B. and C. his then only son, with the consent of A. as protector of the settlement, conveyed the estates, subject to A.'s life estate, but discharged from B.'s life estate, and C.'s estate tail in remainder under the will, to the use of B. for life, with remainder to the use of C. in tail, with remainder to uses in favour of the Defendant and his issue.

It appeared to have been the intention of the parties to this resettlement to preserve therein the limitation in the will to the "first and other sons of B. in tail," but shortly after the death, in 1880, of C. a bachelor, B. being still living, it was discovered that this limitation had been omitted, and that consequently the limitations over in favour of the Defendant and his issue took effect to the exclusion of B.'s future issue, if any.

In an action by A. and B. against the Defendant who was an infant, to have the deed of 1878 rectified by the insertion, next after C.'s estate tail, of a limitation to B.'s "second and other sons in tail:"—

**TENANT IN TAIL—continued.**

*Held*, by Bacon, V.C., that by sect. 47 of the above Act the Court was prohibited, in such a case, from exercising its ordinary jurisdiction as to the rectification of mistakes in deeds. *HALL-DARE v. HALL-DARE - 29 Ch. D. 133, 52 L. T. 381, [33 W. R. 515]*

(*Revd. by C. A. : 34 W. R. 82, W. N. (1885) 199.*)

— Will—Devise.

*See WILL—ESTATE IN REALTY.*

**TENANT RIGHTS—Lease—Abandonment of Tenancy.**

*See LANDLORD AND TENANT—LEASE. 13.*

**TENDER—Costs—Salvage action.**

*See PRACTICE—ADMIRALTY. 6.*

— Salvage Action—Plea of tender without payment into Court.

*See SHIP—SALVAGE. 1.*

**THIRD PARTY.**

*See PRACTICE—THIRD PARTY.*

**TIME—Appeal—Originating summons—Dismissal of.**

*See PRACTICE—APPEAL. 15.*

— Appeal from Chambers.

*See PRACTICE—CHAMBERS. 6, 9, 10.*

— Bankruptcy Appeal—Mistake—Extension of time.

*See BANKRUPTCY—APPEAL. 9.*

— Bankruptcy Appeal—Notice sent by post.

*See BANKRUPTCY—APPEAL. 3.*

— Bastardy order.

*See BASTARDY. 2.*

— Bill of Sale—Stipulated time for payment.

*See BILL OF SALE—FORMALITIES. 4, 5.*

— Computation—Interval—Special resolution.

*See COMPANY—MANAGEMENT.*

— Continuing offence—Erection of temporary building.

*See METROPOLIS. 12.*

— Enlargement—Notice of motion to set aside award.

*See PRACTICE—NOTICE OF MOTION.*

— New trial—County Court.

*See COUNTY COURT. 1.*

— Notice of trial—Short notice.

*See PRACTICE—TRIAL. 8.*

**TITHE—Tithe in Kind—City of London—Occupation without payment—37 Hen. 8, c. 12—Tithe Prescription Act (2 & 3 Will. 4, c. 100.)** The Tithe Prescription Act of 1832 does not apply to claims for statutory tithes in the City of London, under 37 Hen. 8, c. 12.

Decision of Kay, J. (32 W. R. 285, W. N. (1883) 188, 1884 Dig. col. 488) reversed. Observations on *Salkeld v. Johnson* (1 Mac. & G. 243, 13 L. T. (O. S.) 501). *ESDAILE v. PAYNE* (No. 1) 52 L. T. 530, 33 W. R. 364, W. N. (1885) 20 (C.A.)

2. — **Tithe in Kind—Lapse of Time—Presumption of Release—37 Hen. 8, c. 12.]** By the above Act, passed in 1545, the tithes were fixed at 2s. 9d. in the £ upon the rental of houses in the B. parish in the City of London.

An action having been brought in 1880 for tithes under this Act, in respect of houses in the B. parish, by a person claiming to be entitled as a lay impropriator under a grant from the Crown in

**TITHE**—*continued.*

1610, it was admitted on the pleadings that there was no proof of payment of tithes subsequent to the above statute.

The action was for an account of the tithes from Easter, 1879, to Michaelmas, 1881, when the tithes were extinguished by a special Act (42 & 43 Vict. c. clxxvi.)

The main defence now relied on was that, after so long a period as 335 years, the Court must presume that the tithes had been released.

*Held*, by Kay, J., that such a defence could not be set up against a lay proprietor of tithes; and even if this payment of 2s. 9d. in the £ were not tithe properly so-called (see preceding case), the analogy was too close to allow of any distinction being made, and that an account must be directed against the Defendants of what was due from them in respect of the tithes claimed. *ESDAILE v. PAYNE* (No. 2) — 53 L. T. 21, W. N. (1885) 96.

3. — *Tithe Rent-charge—Arrears not recoverable by Sale—Tithes Commutation Act* (6 & 7 Will. 4, c. 71) s. 67.] By the 67th section of the Tithe Commutation Act (6 & 7 Will. 4, c. 71) the sum thenceforth payable in lieu of tithes is declared to be "in the nature of a rent-charge issuing out of the lands charged therewith."

Lands in respect of which a tithe rent-charge was payable having become unproductive, and the remedy by distress and entry having become ineffectual.

*Held*, by Bacon, V.C., that the sum payable in lieu of tithes is not by the statute rendered a charge on the inheritance; and that the owner of the rent-charge was not entitled to claim a sale of the lands in order to recover the arrears of his rent-charge. *BAILEY v. BADHAM* 30 Ch. D. 84, 54 L. J. [Ch. 1067, 53 L. T. 13, 33 W. R. 770, 49 J. P. 660

— Tithe rent-charge—Ireland—Limitation.

*See* LIMITATIONS, STATUTES OF. 13.

— Redemption — Purchase money of lands taken by Railway Co.

*See* LANDS CLAUSES ACT. 12.

**TITLE**—Interrogatories as to Defendant's.

*See* PRACTICE—DISCOVERY—INTERROGATORIES. 7.

— Of trustee in bankruptcy—Relation back.

*See* BANKRUPTCY—TRUSTEE. 4—8.

— Vendor's.

*See* VENDOR AND PURCHASER—TITLE.

**TITLE OF HONOUR**—Whether "land" within Settled Land Act.

*See* SETTLED LAND ACT. 18.

**TORT**—Action for, by married woman—Joinder of husband.

*See* PRACTICE—PARTIES. 7.

— Action for, by married woman—Limitation.

*See* LIMITATIONS, STATUTES OF. 5.

— Action for—Reference—Death of party before award.

*See* ARBITRATION. 1.

— Nuisance affecting realty—Measure of damages.

*See* DAMAGES. 12.

**TOWN COUNCILLORS**—Election of.

*See* MUNICIPAL CORPORATION. 1—5.

**TOWNS IMPROVEMENT ACT**—*Streets—Paving Expenses—Liability of adjoining Owners—Roads made good and afterwards paved and flagged—Towns Improvement Clauses Act* 1847 (10 & 11 Vict. c. 34), s. 53.] In 1857 a local Act was passed which incorporated sect. 53 of the Towns Improvement Clauses Act 1847 (10 & 11 Vict. c. 34.) In 1874 the appellants, in their capacity as the corporation of P., bought some land of the respondents abutting upon a country high road within the district to which the local Act applied, and, in pursuance of an agreement then made with the respondents, at their own expense widened and improved the road and laid out a footpath along the side, and gravelled, channelled, and kerbed the footpath. In 1879 the appellants, in their capacity as the urban authority, paved and flagged the footpath and sought to recover the expense of so doing from the respondents as adjoining owners under the powers of s. 53. The jury found that before the paving and flagging in 1879 the road was not a street in the popular sense of the term, and that the footpath had been "made good" within s. 53:—

*Held*, affirming the decision of the Court of Appeal (13 Q. B. D. 184, 53 L. J. Q. B. 92, 50 L. T. 308, 48 J. P. 404, 1884 Dig., col. 490), that the respondents were not liable, upon the ground that the footpath had been "theretofore made good" within the meaning of s. 53, but without deciding whether the road was a "street" within the meaning of that section.

The word "theretofore" in s. 53 refers to the period before the work is done by the commissioners, not to the period before the passing of the special Act. *PORTSMOUTH (MAYOR OF) v. SMITH*

[10 App. Cas. 364, 54 L. J. Q. B. 473, 53 L. T. 394, 49 J. P. 676 (H.L., E.)

**TRADE**—Offensive—Fish frying.

*See* PUBLIC HEALTH ACTS. 10.

— Restraint of.

*See* RESTRAINT OF TRADE.

**TRADE MARK**—Infringement, action for—Misrepresentations disentitling Plaintiff to relief—Observations on *Siebert v. Findlater* (7 Ch. D. 801). *SIEBERT v. ABBOTT* 48 Amer B. 101 (U.S.)

2. — *Registration—Distinctive Word—User before 1875—Trade-Marks Registration Act, 1875* (38 & 39 Vict., c. 91), s. 10.] On a motion to remove the trade-mark, "Excelsior Spring Mattress," registered in 1876, from the register of trade-marks, on the ground that the word "Excelsior" had not been used as a trade-mark before 1875, it was proved that, before then, the word had been used on bills and notices in relation to mattresses manufactured according to a certain patent, and on plates bearing a device, which were affixed to the mattresses; also that the mattresses had been stamped with the word, and that a photograph of a mattress bearing a label with the words "Excelsior Spring Mattress" was used in obtaining orders for the mattresses:—

*Held*, by Pearson, J., that there had been a sufficient user of the word as a trade-mark before the Act of 1875 to justify its registration as a trade-mark. *Re CHORLTON & DUGDALE'S TRADE-MARK* — 53 L. T. 337, 34 W. R. 60, W. N.

[(1885) 164

**TRADE MARK—continued.**

3. — *Registration—Fancy Words not in Common Use—Identical Label—Power of Comptroller—Sanction of Court—Refusal to register.* An application was made for an order upon the Comptroller of Trade-marks to register a mark having the words "Price's Patent Candle Company" in common letters round the upper border and "National Sperm" in the centre, with the address of the company round the lower border. The Comptroller refused to register the mark, on the ground that there was a mark so nearly resembling this, already on the register, as to be calculated to deceive, and also because it was not a distinctive label within the terms of the Patents Act, 1883:—

*Held*, by Pearson, J., that the name of the firm printed in common letters not being distinctive, and the words "National Sperm" not being fancy words "not in common use," the label did not fulfil the requirements of the Patents, Designs, and Trade-marks Act, 1883, s. 64:—

*Held*, also, that the Comptroller would be justified in refusing to register a label so nearly resembling another label already on the register as to be calculated to deceive, until the opinion of the Court should have been obtained authorizing him to do so. *Re PRICE'S PATENT CANDLE COMPANY* - 27 Ch. D. 681, 54 L. J. Ch. 210, [51 L. T. 653]

4. — *Registration—Fancy Word—Patents, Designs, and Trade-marks Act, 1883 (46 & 47 Vict. c. 57), s. 64, sub-s. (1) (c).* The word "Alpine," and words of such class, although words in common use and not strictly fancy words, may, when applied to articles such as woollen and cotton goods, be registered as a trade-mark, as they are, if not "fancy words," at least fanciful words when applied to such goods, and so fall within s. 64, sub-s. (1) (c), of the Patents, Designs, and Trade-marks Act, 1883. So *held* by Chitty, J. *Re TRADE-MARK "ALPINE." STAPLEY & SMITH'S APPLICATION* 29 Ch. D. 877, 54 L. J. Ch. 727, [53 L. T. 79, 33 W. R. 725]

5. — *Registration—"Fancy Words"—Patents, &c., Act, 1883, s. 64 (c).* The words "Zephyr Asiatic Walnut Pipe" are not capable of being registered as a trade-mark under the above Act, not being "fancy words not in common use." *Re FRIEDLANDER'S TRADE-MARK W. N. (1885) 85*

6. — *Registration—"Fancy words not in Common Use"—Name of Person—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64.* SLAZENGER v. MALINGS - - - W.N. (1885) 124

7. — *Registration—Words publici juris—Trade-marks Registration Act, 1875 (38 & 39 Vict., c. 91), s. 10—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57), s. 64.* A device consisting of a portrait of the original inventor of the article sold, with words above and below it, the essential portion of which have become the common property of the trade and *publici juris*, is not a "distinctive device" within sect. 10 of the Trade-marks Act, 1875 (repealed by the Patents, &c., Act, 1883), and cannot be registered as a trade-mark under that Act.

The decision of Chitty, J., affirmed. *Re ANDERSON'S TRADE MARK* 54 L. J. Ch. 1084 (C.A.)

8. — *Registration—Similarity—Old Marks*

**TRADE MARK—continued.**

—*Patents, Designs, and Trade-marks Act, 1883 (46 & 47 Vict. c. 57), s. 62.* An application made in November, 1884, by an American firm of oil manufacturers for the registration under the Act of 1883 of a trade-mark for illuminating oils, which mark had been used by them in America since 1872, and had been known in England as the "White Rose" mark prior to 1875, was refused by the Comptroller upon the ground that there had been on the register since 1878 a similar mark for illuminating oils called the "Rosaline" mark, of which an English firm were the proprietors:—

*Held*, by Kay, J., that although there was enough similarity between the two marks to render it possible for the public to mistake the one for the other, yet as the "White Rose" was to all intents and purposes an old mark, it ought to be admitted to registration. *Re APPLICATION TO REGISTER THE TRADE-MARK "WHITE ROSE"* 30 Ch. D. 605, [54 L. J. Ch. 981, 53 L. T. 33, 33 W. R. 796]

9. — *Registration—Similarity—Old and New Marks—Sheffield Mark—Trade-marks Registration Act, 1875, ss. 6, 9.* When comparing a trade-mark tendered for registration with another mark already on the register, or assigned by the Cutlers' Co., Sheffield, for the purpose of ascertaining whether the new mark so nearly resembles the old one as to be calculated to deceive, the Court will have regard to the nature of the goods, to the nature and size of the mark, to the mode of affixing it to the goods, to the probable result in practice, and to all the circumstances of the case; and if, having regard to such circumstances, the new mark would be likely to be mistaken for the old one, registration will be refused.

R. applied for the registration of a new mark for cutlery and metal goods included in classes twelve and thirteen, such trade-mark representing a part of his armorial bearings, and consisting of a curved horn with a twist in the middle, and surmounted by two roses. The application was opposed by the Sheffield Cutlers' Co., on the ground that the mark so nearly resembled a Sheffield mark for similar articles assigned 45 years previously to H., as to be calculated to deceive. H.'s mark consisted of a curved horn suspended by a looped cord. The marks were sufficiently distinct when printed in a large size, but the Court of Appeal, being of opinion that in practice, when the two marks were stamped in a small size on small metal articles, and having regard also to the probability of blurring taking place in the process of stamping, the one mark would be likely to be mistaken for the other:—*Held*, reversing the decision of Bacon, V.C., that registration must be refused.

R. also applied for registration for metal goods in Class 5, which were not included in the Cutlers' Co.'s Acts:—*Held*, that the Cutlers' Co. were not entitled to oppose with respect to goods not included in their Acts, and that registration in Class 5, limited to the specified articles, should be allowed. *Re ROSING'S APPLICATION* 54 L. J. Ch. [975, n. (C.A., Nov., 1878)]

10. — *Registration—Similarity—Old and New Marks—Trade Marks Registration Acts, 1875, s. 6—Patents, &c., Act, 1883, ss. 65, 72.* A trade-mark used before the above Act is an old mark only as respecting the goods to which it has been used.

**TRADE MARK—continued.**

As regards other goods, it will be treated as a new mark, and will not be registered if it clashes with another mark which is old in respect of those goods.

Although a new trade-mark may be easily distinguishable from an old one, so long as both are used properly and continue in their original condition, yet registration will be refused to the new mark if there is such a degree of resemblance between the two that the new one might be calculated to deceive if used improperly or worn. *Re Worthington's Application* (14 Ch. D. 8, 49 L. J. Ch. 646) and *Re Rosing's Application* (*supra*) followed. *Re LYNDON'S APPLICATION*

[54 L. J. Ch. 972, W. N. (1885) 160

11. — *Registration—"Three-mark Rule"—Common Mark—Removal from Register—Costs—Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91), s. 5.]* When a trade-mark has been used by more than three persons engaged in the same trade, it is common to the trade, and cannot be registered by any one.

A person who registers a trade-mark does so at his own risk, and if he registers one which is common to the trade it will be removed from the register on the application of the parties aggrieved, and he will have to pay the costs of the application. It makes no difference that he was the person who was the first to adopt the trade-mark if it had become common at the date of registration.

There is no obligation on persons interested to see an advertisement in the "Trade-marks Journal" of an application for registration, and the fact that they have not seen such an advertisement or opposed the application is no bar to their applying to have the mark removed from the register after the registration is complete. *Re HYDE & Co.'s TRADE-MARK* 54 L. J. Ch. 395 n. (Jessel, M.R., 1878)

12. — *Registration—Three-mark Rule—Common Marks—Trade-marks Registration Act, 1875 (38 & 39 Vict. c. 91), s. 6.]* When a trade-mark has not been used by more than three different persons in the same trade as an old mark—that is, before the 13th Aug., 1875—each may register it.

When it has been used by one or two persons as an old mark, it cannot be registered by another person as a new mark without the consent of the prior owner or owners.

When a trade-mark has been used by more than three different persons in the same trade, it is not distinctive, but common to the trade, and cannot be registered by any of them.

*Semble*, that marks which so closely resemble one another that the use of the one might be restrained in an action by the owner of the other, will be treated as identical for the purposes of the above rules. *Re WALKDEN AERATED WATERS Co.'s APPLICATION* 54 L. J. Ch. 394 (Jessel, M.R., 1877)

13. — *Registration—Joint mark—Termination of Joint Adventure—Deceptive mark—Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91) ss. 6, 10.]* J., for some time before 1875, was in the habit of shipping cotton drills to A. & Co., a Manilla firm, for sale on commission, the goods, in common with other goods sold by A. & Co. for other people, bearing a trade-mark representing Britannia, which mark belonged to A. & Co.

**TRADE MARK—continued.**

After the passing of the above Act, doubts having arisen as to the propriety of using such mark, J. wrote to A. & Co., suggesting the use of a new design; and they sent back a proposed trade-mark which represented their house of business at Manilla, with their name on the sign-board; underneath were three columns in Chinese characters, the first representing "J., Manchester;" the second containing the crest of A. & Co.'s Manilla partner, with words indicating that it was his "chop" or mark; and the third representing "A. & Co., Manilla."

On the construction of the letters between the parties, the Court held that there was no contract that the mark should be J.'s property.

*Held*, therefore, that J., after the termination of the joint adventure, was not entitled to register the trade-mark in his own name.

*Semble*, if there had been such a contract, it could not have been enforced, as the trade-mark, if registered as the property of J., would have been calculated to deceive the public. *Robinson v. Finlay* (9 Ch. D. 487, 39 L. T. 398) followed. *Re JONES'S (ROBERT) TRADE MARK* — 53 L. T. 1 (C.A.)

14. — *Registration not Effected until a Year after Application—Patents, &c., Act, 1883 (46 & 47 Vict. c. 57) ss. 63, 76, 90, 113—Disclaimer—Mark Calculated to Deceive—User of Words.]* Where application to register a trade-mark was made in 1879, but registration was not effected until 1885, *held*, by Kay, J., that the combined effect of ss. 63 and 113 of the above Act was that such pending applications for registration as were not completed by registration within the twelve months prescribed by s. 63 came within s. 113, that the registrar was therefore bound to treat the application as abandoned, and that the mark was improperly registered.

The Court, however, exercising the discretion conferred by s. 90, instead of directing the mark to be expunged, ordered the register to be rectified by inserting an entry directing that the five years mentioned in s. 76 should begin to run at the date of such entry.

Where a trade-mark, otherwise unobjectionable, contained words admittedly common in the trade, the Court directed the register to be rectified, by entering a disclaimer of the intention to claim any right of exclusive use of such words.

Where a trade-mark contained the words "sole makers" immediately preceding words descriptive of an article, and it was admitted that the persons registering the mark were not the sole makers of the article, the Court ordered the mark to be expunged from the register as being calculated to deceive.

Where it appeared that the customers of a firm of H. & Co. had for many years been accustomed to ask for a certain article by the name of "Coker canvas," but it did not appear that the words "H.'s Coker canvas" had been stamped upon any of the firm's goods, or advertised as a trade mark:—*Held*, that there had been no user by the firm of the words "H.'s Coker canvas" as a trade mark. *Re HAYWARD'S TRADE MARKS* 54 L. J. Ch. 1003, [53 L. T. 497, W. N. (1885) 158]

15. — *Registration—Design Calculated to Deceive.]* A firm of distillers registered as a trade-mark for their cherry brandy, a hunting scene in connection with the word "sportman."

**TRADE MARK—continued.**

Their cherry brandy consequently became generally known as "The Sportsman's," and also as "Huntsman's" and "Hunter's" cherry brandy. Seven years afterwards another firm registered a trade-mark consisting of another entirely different hunting scene, together with the words "Huntsman's Cherry Brandy."

*Held*, by Kay, J., that, in spite of the dissimilarity between the designs, the second trade-mark was got up for the purpose of passing off cherry brandy as that manufactured by the proprietors of the first trade-mark, and was calculated to deceive; and that the register must be rectified by striking out the second trade-mark. *Re BARKER'S TRADE MARK*

[53 L. T. 23]

16. — *Registration—Rectification of Register—Patents, Designs, and Trade-marks Act, 1883* (46 & 47 Vict. c. 57), ss. 76, 90, 113.] The right to the exclusive use of a trade-mark, after the expiration of five years from the date of registration, given by the Trade-marks Act, 1883, s. 76, is subject to and controlled by s. 90, and therefore any person who considers himself aggrieved by any entry made in the register without sufficient cause is not precluded by the expiration of five years from the date of such registration from showing that the mark ought not to have been registered. *Re LLOYD & SONS' TRADE-MARK, LLOYD v. BOTTOMLEY* — 27 Ch. D. 646, [54 L. J. Ch. 66, 51 L. T. 898]

17. — *Registration—Rectification—Application after Expiration of Five Years—Indefeasible Title—"Common to the Trade"—"Three-Marks Rule"—Patents, Designs, and Trade-marks Act, 1883* (46 & 47 Vict. c. 57), ss. 74, 76, 90.] The registration of a mark as a trade-mark and the lapse of five years do not, under s. 76 of the Trade-marks Act, 1883, confer on the person who has made the registration an indefeasible title to the use of the mark as a trade-mark, if by reason of its being at the time of registration in common use in the trade, it ought not to have been registered.

The lapse of five years cannot make good a registration which was in its inception invalid.

A trade-mark which was originally improperly registered ought, even after the lapse of five years, to be removed from the register, because the registration might enable the person who has made it to commit a fraud.

*Held*, by Pearson, J., that a mark which had been registered as a trade-mark, was, at the time of registration, "common to the trade" because similar (though not in each case identical) marks were then in use by more than three persons engaged in the same trade, although in some of the cases the mark was not actually placed on the goods, but was only used on bill-heads, trade circulars, advertisements, or show-cards. *Re WRAGG'S TRADE-MARK* 29 Ch. D. 551, 54 L. J. Ch. 391, [52 L. T. 467]

18. — *Registration—Rectification—Substituting one name for another—Trade-marks Registration Act, 1875* (38 & 39 Vict. c. 91), s. 5.] R. & Co., wine merchants, for some years exported to M. & Co., of Madras, brandy, which was sold by M. & Co. in India, with a label affixed bearing a trade-mark of a red Maltese cross, and the name M. & Co. This trade-mark was first put upon the

**TRADE MARK—continued.**

bottles in 1875 by R. & Co., at the instance of M. & Co., but the Court found that so much of the mark as consisted of the cross had been previously used by R. & Co., and that the intention of R. & Co. was that this mark should be exclusively used by M. & Co. so long only as they took their brandies from R. & Co., after which it should be the trade-mark of R. & Co.

In April, 1879, M. & Co. wrote to R. & Co., requesting them to register the mark in England for M. & Co., but in September, 1879, R. & Co. registered the mark of the cross in their own names. M. & Co. only discovered this in 1882, after the business relations between the firms had come to an end, when they applied for rectification of the register by striking out the names of M. & Co. as owners of the trade-mark, but the Court refused to strike out the names of R. & Co., on the ground that they had only registered their own mark, and not the mark used by R. & Co.

*Held*, also, that, even if the names of R. & Co. had been expunged from the register, the Court would not, on this application, have put the names of M. & Co. thereon, inasmuch as the requirements of the above Act and the rules thereunder, as to advertisements, &c., in case of an application to register a trade-mark, had not been complied with. *Re RIVIERE'S TRADE-MARK.* 53 L. T. 237 (C.A.)

19. — *Registration for entire Class—Five Years' Registration—User for part of Class only—Assignment—Goodwill—Action—Infringement Rectification—Limitation to Part of Class—Trade-marks Registration Act, 1875*, ss. 2, 3, 4, 5, 10—*Trade-marks Registration Amendment Act, 1876*, s. 1.] An assignee of the goodwill of a business with the right to a trade-mark which has been registered by the assignor under the Trade-marks Registration Act, 1875, in respect of an entire class, but of which the articles dealt with in such business form part only, is not entitled to the exclusive user of the trade-mark for the entire class, but only for the particular articles in connection with which it is actually used, even though the trade-mark may have been on the register for five years.

Sects. 3 and 4 of the Trade-marks Registration Act, 1875, do not confer on the first or subsequent registered proprietor of a trade-mark who has been on the register for five years the absolute right to the exclusive use of his trade-mark as against all the world: the intention of the sections is merely to afford him assistance in bringing an action for infringement, by dispensing with the necessity of his adducing evidence in that action of exclusive user; and the sections are no bar to an application under s. 5 to rectify the register, on the ground that the trade-mark is improperly on the register, or should be restricted to certain goods.

*Semble*, it is not the intention of the Act that a man registering a trade-mark for an entire class, and yet only using it for one description of goods in that class, shall be able to claim for himself the exclusive right to use it for every description of goods in that class. If he desires to extend his business, and apply his trade-mark to a new description of goods in the class, he should have his trade-mark registered in respect of those goods.

*Quære*, whether a man can claim the exclusive use of a registered trade-mark not in actual use in



**TRADE MARK—continued.**

connection with particular goods at the time of registration.

In 1883 E. purchased and took an assignment of the goodwill of the business of an iron merchant and manufacturer, and also of the right to a trade-mark, consisting of a device of Neptune holding a trident with the word "Neptune" added, which had been registered by the assignor in 1878, under the Trade-marks Registration Acts, 1875 and 1876, for the whole of Class 5, described in the "Trade-marks Journal" as "unwrought and partly wrought metals used in manufacture," E. duly getting himself registered as proprietor of the trade-mark. The only business actually carried on by E. and his assignor was and had been that of a manufacturer of iron sheets. In 1880 D. registered a trade-mark bearing the word "Neptune" for "steel wire and iron wire" in Class 5, his business consisting solely of the manufacture and sale of wire. In 1884 E. brought an action against D. for infringement on the ground of the alleged similarity of D.'s trade-mark. D. then applied by summons under s. 5 of the Act of 1875 to have the register rectified by limiting E.'s trade-mark to the articles in Class 5 other than steel and iron wire:—

*Held*, in the action, reversing A. L. Smith, J., (1 C. & E. 428), that inasmuch as the goods sold by E. and D. were entirely distinct, E. was not entitled to an injunction:—

*Held*, also, upon the summons (affirming Bacon, V.C., with a variation), that, notwithstanding the registration of E.'s trade-mark for the whole of Class 5, his trade-mark must be limited to those articles in the class in connection with which it was being actually used, namely, iron sheets. **EDWARDS v. DENNIS. Re EDWARDS' TRADE-MARK**  
30 Ch. D. 454 (C.A.)

20. — *Registration—Rectification of Register—Trade-marks Registration Act, 1875* (38 & 39 Vict. c. 91), s. 5—"For the time being." *Re WOOD'S TRADE-MARK. WOOD v. LAMBERT*  
W. N. (1885) 99

21. — *Registration—Entry on Register of Note limiting User—Ex parte Application—Trade marks Rules, 1883, r. 32.* Objections having been raised by the owner of a registered trade-mark to the proposed registration of another trade-mark for use in connection with goods included in classes for which the first mark was used, but no formal opposition having been lodged to the application for registration, an agreement was entered into between the registered owner and the applicant that no formal opposition should be lodged; that the applicant should use his mark in connection only with goods actually exported to certain specified countries; and that he would, in connection with the registration, cause a note of this restriction on the use of his trade-mark to be entered on the register.

Upon an *ex parte* application by the applicant, in pursuance of this agreement, the Court (Pearson, J.) directed the Comptroller of Trade-marks to enter such a note on the register. *Re KEEF'S TRADE-MARK* - - - 26 Ch. D. 187,  
[54 L. J. Ch. 637, 50 L. T. 453, 32 W. R. 427]

22. — *Registration—Patents, Designs, and Trade-marks Act, 1883* (46 & 47 Vict. c. 57)—*Restricted User—Entry of Undertaking on Re-*

**TRADE MARK—continued.**

*gister.*] The entry, on the register of two similar trade-marks in the same class, of a note that the use of the marks registered is restricted by an agreement between the respective owners (the effect of which is not stated) is irregular, and contrary to the provisions of the Patents, Designs, and Trade-marks Act, 1883; but, following *In re Rabone & Co.* (Seb. Dig. 395), a note of the mutual undertakings not to use the marks except in a certain manner and within specified districts may be entered on the register. *Re MITCHELL & Co.'s TRADE-MARK. Re HOUGHTON & HALLMARK'S TRADE-MARK* 28 Ch. D. 668, 54 L. J. Ch. 216, 909,  
[51 L. T. 900, 52 L. T. 575, 33 W. R. 148, 408]

23. — *Registration—Varying Register by inserting Note as to use of Marks—Note in Nature of a Trust—Patents, &c., Act, 1883* (46 & 47 Vict. c. 67), s. 85. *Re DE OTADUY'S TRADE-MARK*  
[W. N. (1885) 177]

See also **TRADE-NAME.**

**TRADE-NAME—Jurisdiction—Injunction—Telegraphic Address.**] The short address "Street, London," was used for many years in sending telegrams from abroad to Street & Co., of Cornhill. A bank adopted by arrangement with the post office the phrase "Street, London," as a cypher address for telegrams from abroad to themselves:—

*Held*, by Pearson, J., that the Court had no jurisdiction to restrain the bank from using such cypher address. **STREET v. UNION BANK OF SPAIN AND ENGLAND** 30 Ch. D. 156, 55 L. J. Ch. 31,  
[53 L. T. 262, 33 W. R. 901]

2. — *Name acquired in Market—Registration—Trade-marks Registration Act, 1875* (38 & 39 Vict. c. 91), ss. 5, 6.] The Plaintiff, a wine and spirit merchant, registered a trade-mark, together with the words "Strathmore Blend," which was the name of a certain blend of various whiskies made and sold by him, and he advertised the same very widely.

Many of the Plaintiff's customers were in the habit of ordering his whiskey by calling it "Strathmore Whiskey," omitting the word "blend," and the whiskey became known in the market as "Strathmore whiskey."

The Defendant subsequently registered a trade-mark and the name of "Strathmore" for a whiskey blended and sold by him.

The question was whether the use of the word "Strathmore" by the Defendant was calculated to deceive.

*Held*, by Kay, J., that the word "blend" described simply the operation of manufacturing, and was not an essential part of the name of the Plaintiff's whiskey; that the word "Strathmore" was a fancy name; that the use of that word by any person, other than the Plaintiff, as a name for whiskey would be calculated to deceive; and that the Defendant must be restrained by injunction from using the word either as part of his trade-mark or otherwise.

*Held*, also, that it was not lawful for the Defendant to register the word "Strathmore" in combination with his trade-mark, and that the register must be rectified by striking out the word. **BLAIR v. STROCK** - - - 52 L. T. 123

3. — *Name of firm—Resemblance calculated*

**TRADE-NAME—continued.**

to deceive careless and unwary purchasers. *WILLIAMS v. BROOKS* - 47 *Amer R. 643* (U.S.)

4. — *Similarity — Injunction — Insurance Company.* The Plaintiffs, an insurance company registered under the Companies Acts, having carried on business in the city of London for many years as "The Accident Insurance Company, limited," sought an interim injunction to restrain the Defendant company, recently registered under the Companies Acts, and having its office and place of business also in the city of London, from carrying on its business under its registered name of "The Accident, Disease, and General Insurance Company, limited." *Held*, by Pearson, J., that the Plaintiffs were entitled to an interim injunction to restrain the Defendants from using its name as stated above, or any other name calculated to cause the Defendant company to be mistaken for the Plaintiff company.

On appeal a compromise was effected, the Defendants agreeing to change their name in such a manner as not to place the word "accident" as the first word in their title (*see W. N. (1884) 191*). *ACCIDENT INSURANCE CO. v. ACCIDENT, DISEASE, AND GENERAL INSURANCE CO.* 54 *L. J. Ch. 104*, [51 *L. T. 597*, *W. N. (1884) 176*, 191]

*See also* **TRADE MARK.**

— Newspaper—Title—Interlocutory injunction. *See* **NEWSPAPER.**

**TRADER**—Bankruptcy of—Farming for pleasure. *See* **BANKRUPTCY—TRADER.**

**TRADES UNION**—*Prosecution of Officer for Misappropriation—Subsequent action barred—Trades Union Act, 1871 (34 & 35 Vict. c. 31), s. 12.* An officer of a trades union society having been convicted under the above section, and ordered to repay the money he had misappropriated, or undergo a term of imprisonment with hard labour, failed to pay the money, and so underwent the imprisonment. An action having subsequently been brought by the society against the officer to recover the money:—*Held*, by Field and Manisty, JJ., that the society, having proceeded against the Defendant under the above section had no further remedy. *KNIGHT v. WHITMORE* 53 *L. T. 233*, 33 *W. R. 907*

**TRAFFIC**—Highway—Extraordinary Traffic. *See* **HIGHWAY.** 11.

**TRAFFIC MANAGEMENT.**

*See* **RAILWAY COMPANY.** 15—18.

**TRAMWAY**—New South Wales, Law of—Right to run steam motors.

*See* **COLONIAL LAW.** 9.

**TRAMWAYS ACT, 1870**—*By-Laws — Emission of Steam—Construction of Engine-Driver's Liability—Mens rea.* H. was driver of a steam engine on a tramway; one of the by-laws enacting that no steam shall be emitted from the engine, so as to be a reasonable ground of complaint to passengers or the public. H., as driver, was resting the engine, which was not in good repair, and he could not help emitting steam, and one passenger only, when passing, complained of it.

*Held*, by Coleridge, C.J., and Mathew, J., that H. was rightly convicted, as the by-law was imperative, and the evidence was sufficient, though he had no *mens rea*, and one passenger only complained. *HARTLEY v. WILKINSON* 49 *J. P. 726*

**TRANSFER**—Action.

*See* **PRACTICE—TRANSFER.**

— Shares.

*See* **COMPANY—SHARES.** 4—7.

**TREES**—Larch—Windfalls—Tenant for life.

*See* **SETTLEMENT—MANAGEMENT.** 2, 3.

**TRESPASS**—Married woman's right to sue for—House bought out of her own earnings.

*See* **HUSBAND AND WIFE — MARRIED WOMEN'S PROPERTY ACTS.** 6.

**TRIAL.**

*See* **PRACTICE—TRIAL.**

**TRINIDAD**—Law of—Inheritance—Status of children born before marriage.

*See* **COLONIAL LAW.** 12.

**TRUST**—Administration of, constituted by deed—Jurisdiction of chief clerk.

*See* **PRACTICE—CHAMBERS.** 4.

— Breach of, by directors—Indirect sanction.

*See* **COMPANY—DIRECTORS.** 6.

— Declaration of—Imperfect gift.

*See* **GIFT.** 2.

— For accumulations.

*See* **ACCUMULATIONS.**

— For sale—Trust exercisable without consent of *cestui que trust*.

*See* **SETTLEMENT—CONSTRUCTION.** 4.

— Precatory trust.

*See* **WILL—CONSTRUCTION.** 34, 35.

— Transfer of stock into joint names—Intention to benefit.

*See* **ADVANCEMENT.** 4.

**TRUSTEE:—**

I. **APPOINTMENT.**

II. **COSTS AND CHARGES.**

III. **DUTIES.**

IV. **LIABILITIES.**

V. **POWERS.**

**I. TRUSTEE—APPOINTMENT**—*Petition for appointment of New Trustees, where power of appointing new Trustees vested in Tenants for Life, who do not desire to exercise it.* *Re SUTTON* (a lunatic) - - - *W. N. (1885) 123*

2. — *Power to Appoint new Trustees—Retirement of Trustee—Validity of Appointment by continuing Trustee—Exercise of Power after Judgment for Administration of Trusts—Approval of Court—Solicitor of continuing Trustee.* When a power of appointing new trustees authorizes the continuing trustee or trustees to appoint a new trustee or trustees in the place of a trustee or trustees becoming unwilling to act, an appointment by a sole continuing trustee, in the place of a trustee who desires to retire is valid; it is not necessary that the retiring trustee should join in making the appointment.

*In re Glenny and Hartley* (25 *Ch. D. 611*, 53 *L. J. Ch. 417*, 50 *L. T. 79*, 32 *W. R. 457*) commented on, and *dicta* of Bacon, V.C., dissented from.

*Travis v. Illingworth* (2 *Dr. & Sm. 344*) approved and followed.

On the retirement of one of two trustees of a will, the continuing trustee, who was the solicitor to the trustees, appointed his son, who was his

**I. TRUSTEE—APPOINTMENT—continued.**

partner in his business, to be a new trustee. The trusts of the will were being administered by the Court:—

*Held*, by Pearson, J., that, without any reference to the personal fitness of the son, by reason of his position the appointment was one which the Court ought not to approve, though it would not have been invalid if the Court had not been administering the trusts. *Re NORRIS, ALLEN v. NORRIS* - 27 Ch. D. 333, 53 L. J. Ch. 913, [51 L. T. 593, 32 W. R. 955]

3. — *Power of appointing new Trustees—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 31, 33.* A settlement of real estate of which there were four trustees, provided that if the trustees thereby appointed "or any future trustee or trustees to be appointed in the place of them or any of them as hereinafter mentioned" should die or be desirous of being discharged, &c., it should be lawful for "the surviving or continuing trustee or trustees for the time being," with the consent of the tenant for life or in tail for the time being entitled in possession, to appoint a new trustee or new trustees in the place of the trustee or trustees so dying, &c. In 1872, four new trustees were appointed under the Trustee Act, 1850, in the place of two deceased and two retiring trustees. After this a decree was made for carrying the trusts of the settlement into execution. Two of the trustees of 1872 being dead, and another desiring to retire, the Plaintiff, who was an infant tenant in tail in possession, took out a summons to appoint new trustees. W., the continuing trustee, took out a summons asking that he might be at liberty to appoint new trustees. A reference to chambers being directed, W. proposed new trustees whom the Court considered to be proper persons, but to whom all the persons beneficially interested objected.

*Held* (affirming the decision of Pearson, J.), that the persons nominated by W. must be appointed, though the tenant in tail in possession did not consent, for that as the power in the settlement only applied to filling up vacancies in the number of original trustees, or trustees appointed under the power, it had come to an end when new trustees were appointed by the Court in 1872, and that the fetter imposed by the settlement on the exercise of that power did not apply to the new power given to the continuing trustee by the Conveyancing and Law of Property Act, 1881, which enabled him to fill up vacancies in a body of trustees not coming within the scope of the power in the settlement. *CECIL v. LANGDON*

[23 Ch. D. 1, 54 L. J. Ch. 313, 51 L. T. 618, [33 W. R. 1 (C.A.)]

4. — *Power of appointing new Trustees—Executor of sole Trustee—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 31.* The power of appointing new trustees given by sect. 31 of the Conveyancing Act, 1881, to "the personal representatives of the last surviving or continuing trustee" includes the case of an executor of a sole trustee. *Re SHAFTO'S TRUSTS*

[29 Ch. D. 247, 54 L. J. Ch. 1885, 53 L. T. 261, [33 W. R. 728]

5. — *Power of—Exercise pending Administration action—O. LV., rr. 3 (x), 12.* After judg-

**I. TRUSTEE—APPOINTMENT—continued.**

ment in an action for administration of the trusts of a will, the person having by the terms of the will or by statute the power of appointing new trustees retains such powers so far as it does not conflict with the order which has been made, but subject to the control of the Court; and the proper course is for such person, before exercising the power, to submit to the chief clerk in chambers the name of the proposed new trustee for approval. *Re HALL. HALL v. HALL* - 54 L. J. Ch. 527, [51 L. T. 901, 33 W. R. 508, W. N. (1885) 17]

6. — *Power of appointment in Will—Refusal of Sole Trustee to appoint Co-trustee.* A sole continuing trustee under a will which contained a power to appoint new trustees so worded as to contemplate the possibility of there being a sole trustee was held justified in refusing to appoint a co-trustee with himself, although required to do so by a *cestui que trust*, and a trust fund which, under an order of the Court below, he had paid into Court was ordered to be paid out to him alone. *PEACOCK v. COLLING* - 54 L. J. Ch. 743, [53 L. T. 620, 33 W. R. 528 (C.A.)]

*See also* TRUSTEE ACTS.

— Petition for—Policy for benefit of wife.

*See* HUSBAND AND WIFE — MARRIED WOMEN'S PROPERTY ACTS. 7.

**II. TRUSTEE — COSTS AND CHARGES — Administration—Trustee and Executor.** One of two executors and trustees commenced an action against the other for the administration of the estate, and a decree was made. There was no allegation of any misconduct on the part of the Defendant. On the action coming on for further consideration, Mr. Justice Kay gave the Plaintiff his costs as between solicitor and client, but gave the Defendant costs only as between party and party, holding that two sets of costs as between solicitor and client ought not to be allowed to the trustees:—

*Held*, on appeal, that a trustee is entitled to costs as between solicitor and client in an administration action, unless a case of misconduct is made out against him, and that the Defendant must have costs as between solicitor and client. *Re LOVE. HILL v. SPURGEON* 29 Ch. D. 348, 54 L. J. Ch. 816, [53 L. T. 398, 33 W. R. 449 (C.A.)]

2. — *Administration Action—Exercise of Powers by Trustees after order on further consideration.* By an order made on further consideration of an administration action, all the questions raised were practically disposed of; but liberty to apply was reserved. Subsequently the trustees of the will of the testator in the action, in exercise of their powers under the will, and with the consent of the tenant for life, sold land forming part of the estate, and carried out other transactions, without applying for or obtaining any sanction of the Court:—*Held*, by Pearson, J., that the trustees were entitled to their proper costs of carrying out such transactions. *Re MANSEL. RHODES v. JENKIN (or JENKINS)* 54 L. J. Ch. 833, [52 L. T. 806, 33 W. R. 727, W. N. (1885) 112]

3. — *Unauthorized Investment.* A trustee is not, in the absence of misconduct, to be deprived of costs by reason of his having invested in what is not, strictly speaking, an authorized security, if

**II. TRUSTEE—COSTS AND CHARGES—contd.**

at the time of the judgment the fund has been replaced without loss. *PEACOCK v. COLLING* [54 L. J. Ch. 743, 53 L. T. 620, 33 W. R. 523 (C.A.)]

4. — *Will—Solicitor-Executor—Direction as to Professional Charges—Construction.*] A testatrix by her will appointed her solicitor (who prepared her will) one of her two executors and trustees, and, stating that it was her desire that he should continue to act as solicitor in relation to her property and affairs, and should "make the usual professional charges," expressly directed that notwithstanding his acceptance of the office of trustee and executor he should be entitled to make the same professional charges and to receive the same pecuniary emoluments and remuneration for all business done by him, and all attendance, time, and trouble given and bestowed on him in or about the execution of the trusts and powers of the will, and the management by and administration of the trust estate, real or personal, as if he, not being himself a trustee or executor, were employed by the trustee or executor. Under this direction the solicitor-executor delivered bills of costs which included charges for all business done by him, whether such business was strictly professional or could have been transacted by a lay executor without the assistance of a solicitor:—

*Held*, by Kay, J., that all items which were not of a strictly professional character ought to be disallowed.

*In re Ames* (25 Ch. D. 72, 32 W. R. 287) distinguished. *In re CHAPPLE. NEWTON v. CHAPMAN* [27 Ch. D. 584, 51 L. T. 748, 33 W. R. 338]

— Priority—Action by debenture holders.

*See COMPANY—DEBENTURES. 1.*

— Proceedings by married woman restrained from anticipation.

*See HUSBAND AND WIFE—WIFE'S PROPERTY. 5.*

— Sale to trustee—Action to set aside.

*See VENDOR AND PURCHASER—SALE TO TRUSTEE. 2.*

— Voluntary settlement—Rectification.

*See VOLUNTARY CONVEYANCE. 5.*

**III. TRUSTEE—DUTIES—Loan for specific purpose—Bankruptcy of Borrower—Following Money lent.**

] Where money is advanced by way of loan for the purpose of being applied for a specific purpose and upon the undertaking of the borrower to so apply it, a duty is cast upon the borrower which places him in the position of a trustee of the money advanced, and in the event of the bankruptcy of the borrower before the undertaking has been fulfilled, the lender is entitled to follow and recover the money in the same manner as if it had been in terms a trust fund. *GIBERT v. GONARD* - 54 L. J. Ch. 439, 52 L. T. 54, [33 W. R. 302]

**IV. TRUSTEE—LIABILITIES—Breach of Trust—Deposit at a Bank—Delay.**

] Where trustees had left £500, trust money, on deposit at a bank as an interim investment for fourteen months, when the bank failed and £138 was lost, they were held by Kay, J., liable for the loss. *CANN v. CANN* [51 L. T. 770, 33 W. R. 40]

2. — *Breach of Trust—Concurrence of Cestui que trust—Right to Indemnity—Married Woman.*]

**IV. TRUSTEE—LIABILITIES—continued.**

Where a *cestui que trust*, who is party to a breach of trust, is a married woman, and the trustees claim a right of retainer against her life interest in the settled funds to indemnify them against their breach of trust, they are bound to show that she acted for herself in the breach of trust, and was fully informed of the state of the case. *SAWYER v. SAWYER* - 23 Ch. D. 595, 54 L. J. Ch. 444, [52 L. T. 292, 33 W. R. 403 (C.A.)]

3. — *Employment of Solicitor—Misappropriation.*] Trustees are not justified in allowing trust money to get into a solicitor's hand, or in allowing him to hold the securities upon which the trust fund is invested; and the law is the same where the estate is being administered by the Court.

Trustees of an estate which was being administered by the Court employed a solicitor to manage the trust estate, and allowed him to receive the trust moneys for the purpose of investment. The solicitor represented that he had duly made investments, and he rendered periodical accounts to the trustees purporting to shew such investments, and paid the interest upon them. He had, in fact, never made any investments, but had misappropriated the money, and ultimately he filed a liquidation petition, and a part of the trust fund was thus lost.

*Held*, by Kay, J., that the trustees were liable to make good the loss to the trust estate. *Re DEWAR. DEWAR v. BROOKE* 54 L. J. Ch. 830, [52 L. T. 489, 33 W. R. 497]

4. — *Investment—Mortgage on House Property—Employment of Agents—Valuation by Mortgagee's Surveyor—Selection of Valuer—Negligence—Liability of Trustees.*] The rule that trustees, acting according to the ordinary course of business, and employing agents as prudent men of business would do on their own behalf, are not liable for the default of the agent so employed, is subject to the limitation that the agent must not be employed out of the ordinary scope of his business.

Trustees empowered to invest on mortgage lent under the advice of their solicitors a sum of £5000 upon mortgage of a freehold house and grounds at Liverpool, valued to them at from £7000 to £8000. The trustees did not exercise their own judgment as to the choice of a valuer, but accepted the suggestion of their solicitors, that a London surveyor who had introduced the security to them, and was in fact the agent of the mortgagee with a pecuniary interest in the completion of the mortgage, should value the property for the trustees, and they acted upon the report of this valuer, which was of an inflated character.

The mortgagee afterwards became bankrupt, and the property would not realize the sum advanced:—

*Held*, by Kay, J., that the trustees were jointly and severally liable to replace the sum advanced, with interest at 4 per cent. from the date of the loan. *FRY v. TAPSON* - 28 Ch. D. 268, [54 L. J. Ch. 224, 51 L. T. 326, 33 W. R. 113]

5. — *Investment—Mortgage—Negligence.*] A trustee advanced trust moneys to a brickbuilding firm upon the security of a first mortgage of their premises and some of the plant. In doing so he

**IV. TRUSTEE—LIABILITIES—continued.**

acted upon the advice of his solicitor, and upon a favourable report and valuation made by a respectable firm of architects and surveyors. A bank of good standing, moreover, consented to postpone a charge of theirs to his mortgage. Three years afterwards the mortgagors failed, whereby their lease of that part of the property upon which was most of the clay and shale necessary for the carrying on of the business, became forfeited. The rest of the property proved unsaleable, and rapidly went to ruin.

The *cestuis que trustent* subsequently brought an action to make the trustee liable for the loss sustained by them, and it appeared that the report and valuation proceeded, *ex facie*, in some respects upon faulty principles.

*Held*, nevertheless, by Pearson, J., applying the rule stated in *Godfrey v. Faulkner* (23 Ch. D. 483, 52 L. J. Ch. 820, 48 L. T. 853, 32 W. R. 23, 47 J. P. 676), that the trustee had acted as a prudent man would have acted in dealing with his own property, and was therefore not liable. *Re PEARSON. OXLEY v. SCARTH* - - - 51 L. T. 692

6. — *Investment—Sub-mortgage—Building Estate—Speculative Security—Separate Mortgages—Breach of Trust—Transfer of Securities—Executors—Waiver—Adoption and Acquiescence.* Under a settlement S. was tenant for life with an ultimate trust, in default of children (which happened), for her testamentary appointees. The trustees, having power to invest on leasehold securities, invested the trust funds, with S.'s consent, on separate sub-mortgages of leasehold houses, unfinished and unlet, on a building estate of which the roads and drainage were in a defective condition. The investment was made without an independent or reliable valuation, and more than half the value of the house was lent on each sub-mortgage. S. died, having by will disposed of the trust funds and appointed executors. The executors, with the sanction of the Chief Clerk in an action establishing S.'s testamentary appointment, had the sub-mortgages transferred to them by the trustees, and subsequently, finding them an insufficient security, brought an action against the trustees to make them personally liable for the deficiency:—

*Held*, by Bacon, V.C., that, although the sub-mortgages were not proper investments in point of form, the trustees having invested the trust funds on insufficient security of a speculative character, and without proper precautions, must make good the loss; and that the executors, having taken the transfers in ignorance of the circumstances attending the investment, were not bound by adoption or acquiescence. *SMETHURST v. HASTINGS* 30 Ch. D. 490, 52 L. T. 567, 33 W. R. 496

7. — *Investment—Bank Shares—Special Act increasing Shareholder's Liability—Exoneratation.* *Re MULLETT. MULLETT v. HAWORTH* [W. N. (1885) 130

8. — *Investment—Insufficient Security—Mortgage—Mortgagee a Builder—Advance of a greater amount than half the value of the Property.* *HOEY v. GREEN* - - - W. N. (1884) 236

9. — *Will—Discretionary Trust for Children of A.—Authority to pay to A.—Loss by Non-*

**IV. TRUSTEE—LIABILITIES—continued.**

*conversion—Form of Order.*] A trust for the benefit of the children of A., with an authority to pay the trust funds over to their parent or guardian, does not empower the trustees to hand over the trust funds to A. without exercising any discretion in respect of his children's interests.

Where there has been a loss to the trust estate by reason of a non-conversion of a security forming part of the trust property, but the trustees allege that they could at no time have realised the full value of the security, they will be allowed the benefit of an enquiry to shew the actual amount which would have been realised by a conversion at the proper time, and their liability will be limited accordingly. So *held*, by North, J. *GAINSBOROUGH (EARL OF) v. WATCOMBE TERRA COTTA CLAY CO. DUNNING v. GAINSBOROUGH (EARL OF)*

[54 L. J. Ch. 991, 53 L. T. 116, W. N. (1885) 110

**V. TRUSTEE—POWERS—Discretion—Power of Investment—"Uncontrolled Discretion."** A testator directed that his trustees should invest the moneys coming to their hands in respect of his estate in their names or under their control in such mode or modes of investment as they in their uncontrolled discretion should think fit. Before the commencement of an action to administer the testator's estate, the trustees (who were also executors) invested moneys forming part of it in the purchase of bonds of a foreign Government, bonds of a colonial railway company, and shares of a bank on which there was a further liability. The Chief Clerk, in taking the accounts of the testator's estate, disallowed the trustees the sums which they had expended in the purchase of these bonds and shares. The shares in the bank had been previously sold at a profit:—

*Held*, by Pearson, J., that, though the investments in question ought not to be retained by the trustees, yet, as they had acted *bonâ fide*, and no loss had resulted to the trust estate, they ought not to be disallowed the sums which they had laid out in making the investments. *Re BROWN. BROWN v. BROWN* - - - 29 Ch. D. 889, 54 L. J. Ch. 1134, [52 L. T. 553, 33 W. R. 692

2. — *Trust for Sale—Postponing Sale.* Where real estate is devised to trustees in trust for sale, with a discretionary power to postpone the sale, the Court will not interfere with a *bonâ fide* exercise of their discretion as to the time and mode of sale. *Re BLAKE. JONES (or PUGHE-JONES) v. BLAKE* - - - 29 Ch. D. 913, 54 L. J. Ch. 890, [53 L. T. 302, 33 W. R. 886 (C.A.)

— Discretion—Maintenance of infant.

*See* INFANT. 5, 7.

— Trustees of will—Power to carry on business.

*See* WILL—TRUSTEES.

**TRUSTEE.**

*See also* ADMINISTRATOR.

EXECUTOR.

SETTLED ESTATES ACTS.

SETTLED LAND ACTS.

SETTLEMENT.

TRUSTEE ACTS.

TRUSTEE RELIEF ACTS.

— Admissions by—Payment into Court upon.

*See* PRACTICE—PAYMENT INTO COURT. 1.

**TRUSTEE—continued.**

- Bill of costs paid by—Application by *cestui que trust* for taxation.  
See SOLICITOR—BILL OF COSTS. 17.
- Copyholds—Customary heiress of devisee of surviving trustee.  
See COPYHOLDS. 2.
- Creditors' deed—Liability to account to trustee in bankruptcy.  
See CREDITORS' DEED. 1.
- Legal estate—Prior incumbrance—Notice.  
See MORTGAGE—PRIORITY. 6.
- Sale by—Depreciatory conditions.  
See VENDOR AND PURCHASER—CONDITIONS OF SALE. 1.
- Sale to.  
See VENDOR AND PURCHASER—SALE TO TRUSTEE.

**TRUSTEE ACTS—New Trustees—Appointment—Appointment of existing Trustees as sole Trustees in place of themselves and a bankrupt and absconding Trustee—Trustee Act, 1850 (13 & 14 Vict. c. 60), ss. 32, 34.]** It is the settled practice of the Court under the Trustee Acts, when there is a continuing trust, not simply to remove or discharge a trustee, without appointing a new trustee in his place, by appointing the remaining trustees to be sole trustees in place of themselves and him. And though the Court will deviate from this rule if the trustees have no duty to perform but to distribute a fund which is immediately divisible, it will adhere to the ordinary rule if there is a continuing trust as regards even a relatively small part of the trust fund. *Re LAMB'S TRUSTS* - 28 Ch. D. 77, [54 L. J. Ch. 107, 33 W. R. 163]

2. — **New Trustees—Appointment—Vesting Order—Interested Parties—Beneficiary abroad—Undertaking—Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 40.]** The Court appointed two persons, one a beneficiary, and the other the husband of a beneficiary, trustees of a will upon their undertaking, if either were left sole trustee, to use every endeavour to obtain the appointment of a co-trustee; and dispensed with service on a beneficiary who was *sui juris* and resident in Buenos Ayres, on the authority of *Re Blanchard* (3 D. G. F. & J. 131, 137, 9 W. R. 647). *Re LIGHTBODY'S TRUSTS* [52 L. T. 40, 33 W. R. 452, W. N. (1885) 3]

3. — **New Trustees—Lunatic Trustee—Order vesting Right to deal with the Trust Fund in the Trustees of Sound Mind.]** Although, where one of the trustees of a trust fund becomes lunatic, the Court will not in general vest the right to deal with the trust funds in the trustees of sound mind, but will require a new trustee to be appointed in the place of the lunatic, an order vesting the right to the fund in the trustees of sound mind will be made where the fund is immediately divisible. *Re MARTYN, a LUNATIC. Re TOUTT'S WILL* [28 Ch. D. 745, 54 L. J. Ch. 1016, 50 L. T. 552, [32 W. R. 734 (C.A.)]

4. — **New Trustees—"Person of unsound Mind"—Vesting Order—Trustee Act, 1850 (13 & 14 Vict. c. 60), ss. 2, 3, 32.]** A trustee who is, by reason of advanced age and failure of memory, unable to transact business, is a "person of unsound mind" within sect. 2 of the above Act, and the Court can remove him without his consent, and

**TRUSTEE ACTS—continued.**

appoint a new trustee or new trustees in his place, but cannot make a vesting order, which must be obtained from the Court of Appeal sitting in Lunacy. To empower the Court to make a vesting order, the trustee's consent must previously be procured.

*Re Boyce* (4 D. G. J. & Sm. 205, 9 L. T. 670), followed.

*Re Bignold* (L. R. 7 Ch. 223, 26 L. T. 176), and *Re Lemann's Trusts* (22 Ch. D. 633, 52 L. J. Ch. 560, 48 L. T. 389, 31 W. R. 520), not followed. *Re PHELPS' SETTLEMENT TRUSTS*

[53 L. T. 27]

5. — **New Trustees—Separate Trustees of distinct Part of Trust Property—Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 5.]** Appointment made of new trustees to act in conjunction with a sole continuing trustee of a will in relation to a distinct part of the trust property. *Re PAINE'S TRUSTS* - 23 Ch. D. 725, 54 L. J. Ch. 735, [52 L. T. 323, 33 W. R. 564]

6. — **New Trustees—Vesting Order—"Seised jointly"—Coparceners—Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 10.]** The words "seised jointly" in sect. 10 of the Trustee Act, 1850, are not limited strictly to a legal joint tenancy, but are used in the widest sense, and they include the case of land vested in coparceners, one of whom is out of the jurisdiction of the Court. So held, by Pearson, J.

*In re Templer's Trusts* (4 N. R. 494) and *McMurray v. Spicer* (L. R. 5 Eq. 527) considered. *Re GREENWOOD'S TRUSTS* - 27 Ch. D. 359, [54 L. J. Ch. 623, 51 L. T. 283, 33 W. R. 342]

7. — **Practice—New Trustees—Petition—Vesting Order in Chambers—Transfer of Stock—Jurisdiction—Trustee Act, 1850, ss. 2, 32, 35, 40—Trustee Extension Act, 1852, s. 6—Master in Chancery Abolition Act, 1852 (15 & 16 Vict. c. 80), ss. 11, 26, 27—Despatch of Business Act, 1855 (18 & 19 Vict. c. 134), s. 16—Cons. Ord. XXXV., r. 1—Judicature Act, 1873, s. 16—Order LV., r. 2 (8), 18—Statute Law Revision Act, 1883, s. 5.]** On a petition for the appointment of new trustees and a vesting order, an order was made in Court on the 28th of June, 1884, that two or more proper persons should be appointed trustees, and that an inquiry should be made of what the trust funds consisted; and the parties were to be at liberty to apply in Chambers for an order to vest the trust property in the new trustees when appointed. On the 22nd of July, before any certificate as to the trust funds had been made, an order was made in Chambers appointing new trustees, and directing that the right to call for a transfer of, and to transfer into their own names, certain sums of stock specified in the order "may" vest in the new trustees. This order mentioned, but did not recite, the order of 28th of June. The Bank of England refused to act on it, and Bacon, V.C. (54 L. J. Ch. 304, 51 L. T. 679), on the 28th of November, made an order directing them to do so. The bank appealed:—

Held, that the matter having been properly brought before the Court on petition, the Judge had power under the provisions of the Masters Abolition Act, 1852 (15 & 16 Vict. c. 80), to dispose in Chambers of such parts of the matters brought before him on the petition as he thought could be more conveniently disposed of in Cham-

**TRUSTEE ACTS—continued.**

bers than in Court, and that there was therefore jurisdiction to make the order of the 22nd of July.

*Frodsham v. Frodsham* (15 Ch. D. 317) distinguished.

But *held*, that the order was so irregular in form that the bank were justified in declining to act upon it, they being entitled to require a vesting order to be in such a form as to shew that the statutory requirements have been satisfied.

Statement of the recitals which ought to be contained in a vesting order made in Chambers under the Trustee Act. *Re TWEEDY*

[28 Ch. D. 529, 54 L. J. Ch. 331, 52 L. T. 65, [33 W. R. 313 (C.A.)]

8. — *Vesting Order—Death of sole Trustee—No Personal Representative—Trustee Act, 1850, ss. 32, 34—Conveyancing Act, 1881, s. 30 (i.).* The sole survivor of three trustees of real estate having died, and there being no personal representative of his estate, the Court made an order vesting the trust property in new trustees "for all the estate and interest which the deceased trustee had in him at the time of his death." *Re RACKSTRAW'S TRUSTS* - 52 L. T. 612, 33 W. R. 559, [W. N. (1885) 73]

**TRUSTEE IN BANKRUPTCY.**

*See* BANKRUPTCY—TRUSTEE.

**TURNPIKE.**

*See* HIGHWAY.

**U.**

**ULTRA VIRES ACT**—Abandonment of railway—Deposit—Interest on money raised on personal security.

*See* RAILWAY COMPANY. 2.

— Bankruptcy appeal—Small bankruptcy—Leave.

*See* BANKRUPTCY—APPEAL. 7.

— Building society—Overdrawing banker's account.

*See* BUILDING SOCIETY 4, 5.

— Corporation—Borrowing powers.

*See* CORPORATION.

— Directors of loan society—Advances by—Personal security.

*See* COMPANY—DIRECTORS. 5.

— Local Board—Agreement binding successors.

*See* PUBLIC HEALTH ACTS. 5.

**UNDERLEASE**—Agreement for—Covenants.

*See* LANDLORD AND TENANT—AGREEMENT. 4.

**UNDERTAKING**—As to damages—Enforcement—Married woman—Mistake in law.

*See* PRACTICE—INJUNCTION. 2.

— As to damages—Married woman—Injunction to restrain transfer of stock.

*See* PRACTICE—CHARGING ORDERS.

— Enforcement of.

*See* SPECIFIC PERFORMANCE. 3.

**UNDUE PREFERENCE**—Railway company—Rates.

*See* RAILWAY COMPANY. 16—18.

**UNREGISTERED COMPANY.**

*See* COMPANY—UNREGISTERED COMPANY.

**URINAL**—Nuisance—Compensation—Mandatory injunction.

*See* PUBLIC HEALTH ACTS. 9.

**V.**

**VAGRANT ACTS**—5 Geo. 4, c. 83, s. 4—"Frequenting" a Public Thoroughfare with Intent to commit a Felony.] A man who frequents a public street, having in his mind the intent to commit a felony when and wheresoever opportunity arises, is liable to the penalties of the Vagrant Act, 5 Geo. 4, c. 83, s. 4, even though no opportunity should arise, and may be committed as a rogue and vagabond, if the justices are satisfied on sufficient evidence, first, that he frequented the street, and secondly, that he did so with intent to commit a felony. The overt act, or the attempt to carry out the intent, is not an essential part of the offence against the Act. The Appellant was found and apprehended by two constables at about two o'clock in the morning in a public thoroughfare called Victoria Road, having in his possession a portion of a brass pump which appeared to have been wrenched off from the continuation-pipe. Being stopped and questioned as to how he became possessed of it and whither he was taking it, he gave an account which proved to be false, and also a false name and address. Being charged before two justices on suspicion of having stolen the pump, and the proof failing, he was then charged under 5 Geo. 4, c. 83, s. 4, with frequenting the street in question with intent to commit a felony; and on proof that he was an associate of thieves, and had four years before been convicted and sentenced to imprisonment for a felony,—although there was no proof that he had ever before been seen in the street in question, or that the pump had been stolen,—he was convicted as a rogue and vagabond under the 4th section of the Vagrant Act, for "frequenting the public thoroughfare with intent to commit a felony," and sentenced to be imprisoned:—*Held*, by Grove and Hawkins, JJ., that the evidence did not warrant the conviction, inasmuch as it did not shew a frequenting of Victoria Road with intent to commit a felony. *CLARK v. THE QUEEN (or REG. v. CLARK)*

[14 Q. B. D. 92, 54 L. J. M. C. 66, 52 L. T. 136, [33 W. R. 226, 49 J. P. 246, 15 Cox, C.C. 666]

**VALUATION**—Annuity—Insufficient funds—Apportionment.

*See* ANNUITY.

**VENDOR AND PURCHASER:—**

I. COMPENSATION.

II. CONDITIONS OF SALE.

III. CONTRACT.

IV. CONVEYANCE.

V. FRAUD.

VI. INTEREST.

VII. RESCISSION.

VIII. SALE TO TRUSTEE

IX. TITLE.

**I. VENDOR AND PURCHASER—COMPENSATION—Misrepresentation—Rescission of Contract.]**

The particulars of sale of a freehold property described the garden as "inclosed by a rustic wall with tradesmen's side entrance." The wall did not form part of the property, and the tradesmen's side entrance was used on sufferance. This was known to the vendor, but not disclosed to the purchaser. The conditions of sale provided that mistakes or errors in the description or particulars should not annul the sale, but that compensation should be given:—

*Held*, by North, J., that it was not a case for compensation, and that the purchaser was entitled to have the contract rescinded. *BREWER v. BROWN*

[28 Ch. D. 309, 54 L. J. Ch. 605]

2. — *Mistake in Quantities*—"More or less"—*Plan*.] A vendor agreed to sell land containing "40 acres or thereabouts, be the same more or less, delineated in the plan hereunto annexed, and therein edged pink," for £9000. There was also a provision for compensation in case of mistake. The vendor finding after part conveyance that there were 41a. 1r. 10p., claimed an increase of the purchase-money:—

*Held*, by Bacon, V.C., that the vendor was not entitled to any compensation, and must convey the residue on payment of the balance of the purchase-money. *ORANGE to WRIGHT* 54 L. J. Ch. 590,

[52 L. T. 606, W. N. (1885) 72]

3. — *Provision for Compensation in case of "error, misstatement, or misdescription"*—"About 63 feet"; really 69½ feet—*Vendors not entitled to compensation*. *BOURNE v. LONDON AND COUNTY LAND AND BUILDING CO.* — W. N. (1885) 109

— *After conveyance*—*Error in quantities*.

See VENDOR AND PURCHASER—RESCISSION. 4.

**II. VENDOR AND PURCHASER—CONDITIONS OF SALE—Depreciatory Conditions—Sale by Trustees.]**

Trustees for sale under a will put up for sale by auction certain lands in numerous small lots, with conditions providing (*inter alia*) that the title should commence with the conveyance to the testator ten years before; that every recital in any abstracted document should be conclusive evidence of the fact stated; and that the lots were sold "subject to the existing tenancies, restrictive covenants, and all easements and quit-rents (if any) affecting the same," and that the purchasers were to indemnify the vendors against the breach of any restrictive covenants contained in the abstracted muniments of title. The sale was made also subject to certain general conditions restricting the occupation of the land. The abstracted documents contained no other restrictive covenants than those comprised in the general conditions; and the vendors stated that they knew of no other restrictive covenants, and of no existing tenancies, easements, or quit-rents affecting the property:—

*Held*, affirming the decision of North, J. (25 Ch. D. 629, 53 L. J. Ch. 537, 49 L. T. 670, 32 W. R. 197, 1884 Dig. col. 512), that the condition as to existing tenancies and restrictive covenants was depreciatory, and that the objection was a good defence to an action for specific performance by the trustees against a purchaser.

But, *semble*, the condition limiting the title to ten years, having regard to the number and small-

**II. VENDOR AND PURCHASER—CONDITIONS OF SALE—continued.**

ness of the lots, was not unreasonable. *DUNN v. FLOOD* — 28 Ch. D. 586, 54 L. J. Ch. 370, [52 L. T. 699, 33 W. R. 315 (C.A.)]

2. — *Evidence of Title, Stipulation as to—Performance of Stipulation become impossible*. *LONDON LAND CO. v. HARRIS* W. N. (1885) 137

3. — *Misleading Conditions—Right to rescind—Measure of Damages*.] In March, 1880, the Defendant agreed to sell to the Plaintiff some leasehold houses for £700. The agreement stated that the property was held for a term of fifty years, less ten days, from Christmas, 1856, and also a condition that the title should commence with two underleases, dated 20th and 27th of April, 1857, under which the vendor held the property, and that the purchaser should make no requisition or objection in respect of the prior title or the right to grant the said underleases. The purchase was completed. Four years afterwards the purchaser brought an action to set aside the conveyance, having discovered the underleases to be invalid. This was disputed, but the Court held that the lessor of the underleases had not sufficient interest to support them, and that the assignment to the purchaser only gave him the property for a term, which would expire in September, 1889. The vendor had suspected this defect in his title, if he was not actually aware of it:—

*Held*, by North, J., that the purchaser had a right to rely on the statement that the property was held for a term of fifty years, and that the condition could not prevail against it; that the purchaser was entitled to have the conveyance set aside, but as the parties agreed that damages should be paid him instead, the proper measure of such damages was the difference between £700 and the true value of the property for a term with only nine and a half years to run from the date of the contract, calculated on the assumption that £700 was its true value if held for the longer term. *NASH v. WOODERSON* 52 L. T. 49, 33 W. R. 301, [W. N. (1884) 210]

4. — *Misleading Conditions—Married Woman entitled to one-fifth of the fee-simple—Unacknowledged Deed—Summons to compel Purchaser to complete dismissed*. *Re CUMMING to GODBOLT* — W. N. (1884) 204

5. — *Sale of Leasehold in Lots—Apportionment of Rent—"Right of Indemnity against the other lots"—Conveyance—Powers of Distress and Entry to enforce Contribution—"Purchaser of the largest lot in amount"—Only two Lots sold and to purchasers at same prices—Custody of Original Lease*.] A leasehold, subject to the yearly rent of £12 10s., was put up for sale by auction in five lots under conditions of sale, one of which provided that each lot should be sold subject to the entire rent, but "with right of indemnity against the other lots, save as to £2 10s."; and another, that the original lease would be handed to "the purchaser of the largest lot in amount." At the auction only two lots were sold, one to O. for £200, and the other to S. at the same price. A few days afterwards O. sent in a proposal to purchase another lot for £160, subject to the same conditions of sale, which offer was accepted. S. subsequently executed an agreement with O. surrendering in his favour



### II. VENDOR AND PURCHASER—CONDITIONS OF SALE—*continued.*

any claim which he (S.) might have to the original lease. The two other lots remained unsold. O. having claimed the custody of the original lease, and to have inserted in the conveyance of his two lots to him a clause creating a rentcharge upon the other three lots equivalent to the amount of their aliquot share of the rent, with powers of distress and entry for its enforcement:—

*Held*, upon a summons issued by O. under the Vendors and Purchasers Act, 1874 (reversing the decision of Porter, M.R.), that he was entitled to insist upon his requisitions save as to the creation of a rentcharge. *Re DOHERTY'S CONTRACT*

[15 L. R. Ir. 247 (C.A.)]

6. — *Sale of two lots—Restrictive Covenants between Purchasers—Withdrawal of one lot from Sale.* Two lots of land were put up for sale under conditions which, after reciting that the vendor was possessed of adjoining property not included in the sale, provided that each purchaser should, in his conveyance, enter into a covenant with the vendor and the purchaser of the other lot, not to use any building on his lot as a public-house, and to the conditions was annexed a form of covenant to this effect. No provision was made for the case of a lot remaining unsold. Lot 2 was purchased at the sale, and the purchaser signed a contract embodying the conditions. Lot 1 remained unsold.

*Held*, affirming the decision of Chitty, J., that the purchaser was bound to enter into the restrictive covenant with the vendor. *Re MORDY AND COWMAN* — — — 51 L. T. 721 (C.A.)

*See also* VENDOR AND PURCHASER—CONTRACT. 2.

VENDOR AND PURCHASER—INTEREST. 1.

VENDOR AND PURCHASER—RESCISSION.

— Compensation—Provision for.

*See* VENDOR AND PURCHASER—COMPENSATION.

### III. VENDOR AND PURCHASER—CONTRACT

—*Contracting Parties—Statute of Frauds—Memorandum in Writing—Agent—Correspondence—29 Car. 2, c. 3, s. 4.* An action for specific performance was brought by vendors. The following telegram had been signed and sent by the purchaser's solicitor to the vendors' solicitor: "H. will purchase Stonyroad at the sum named to me as owing to the mortgagees. Will write to-night." A telegram in reply was sent by the vendors' solicitor, as follows: "Telegram with offer received, which I accept as solicitor to the second mortgagees." The purchaser's solicitor then wrote to the vendors' solicitor: "I am in receipt of your telegram accepting H.'s offer. If I recollect rightly the amount was some £1578. Send me the contract, and I will get it signed." It was admitted by the purchaser that his solicitor was his agent, duly authorized on his behalf to send the telegram. Beyond this there was no distinct evidence of agency.

*Held*, by Kay, J., that there was no sufficient memorandum in writing to satisfy the Statute of Frauds; that it could not be inferred that the purchaser's solicitor was his agent to write the letter;

### III. VENDOR AND PURCHASER—CONTRACT—*continued.*

but, even if this could be inferred, the words "send me the contract," &c., shewed that it was not the intention of the parties that the letter should constitute a contract between them. *GOODALL v. HARDING* — — — 52 L. T. 126

2. — *Restrictive Covenants, Non-disclosure of—Right to rescind—Conditions of Sale precluding Objections as to Omissions in Contract, Effect of—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3, sub-s. 3, 11.* The owner in fee of land sold and conveyed it, during the years 1865, 1866, and 1867, in thirteen lots to different purchasers, each lot being subject to covenants entered into by the purchasers restricting the use of the land as a brickyard and in other respects. The Defendant subsequently became the purchaser of Lot 11, but the deed of conveyance to him did not contain the restrictive covenants. In 1882, the Plaintiffs, a company for manufacturing bricks, contracted to purchase Lot 11 from the Defendant under conditions of sale which stated that the property was sold subject to any matter or thing affecting the same, whether disclosed at the time of sale or not; and provided that any error or omission in the particulars should not annul the sale, nor entitle the purchaser to compensation. The existence of the restrictive covenants was not mentioned in the contract, but during the negotiations the Defendant stated that there were covenants restricting the use of the land as a brickyard, but his solicitor, who was present and to whom the Plaintiffs' solicitor applied for information, stated that he was not aware of any such covenants. The Plaintiffs paid a deposit upon the purchase-money, and having subsequently discovered that there were restrictive covenants claimed to rescind their contract and sued the Defendant to recover the amount of the deposit:—*Held*, by Wills and Manisty, JJ., that the Plaintiffs, if their contract with the Defendant were carried out, would be bound by the restrictive covenants, and that the owners of the other twelve lots purchased from the original vendor would be entitled to enforce those covenants against the Plaintiffs; that the Plaintiffs were not precluded by the terms of the conditions of sale, nor by s. 3, sub-s. 3, of the Conveyancing Act, 1881, from refusing to complete the purchase, and that they were therefore entitled to recover the amount of the deposit. *NOTTINGHAM PATENT BRICK AND TILE COMPANY v. BUTLER* [15 Q. B. D. 261, 54 L. J. Q. B. 545]

— Auctioneer's authority—Specific performance.

*See* PRINCIPAL AND AGENT. 5.

— Memorandum—Statute of Frauds.

*See* FRAUDS, STATUTE OF. 2, 3.

### IV. VENDOR AND PURCHASER—CONVEYANCE

—*Discharge of Incumbrances—Mortgage—Payment into Court—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 5.* A mortgage deed gave the mortgagee an option to purchase in case the debt was not paid on a day named. The trustees in bankruptcy of the mortgagors sold the mortgaged property. A part of the purchase-money was deposited to provide against the mortgage. Pending proceedings on the part of the trustees to set aside the mortgage on the ground of fraudulent preference, an order was made that the money de-

#### IV. VENDOR AND PURCHASER—CONVEYANCE—continued.

posited should be paid into Court, and on such further sum being paid in as would cover the principal and interest due, and 10 per cent. extra, the mortgaged property should vest in the purchaser. *MILFORD HAVEN RAILWAY AND ESTATE COMPANY v. MOWATT. Re LAKE AND TAYLOR'S MORTGAGE. SPAIN v. MOWATT* 28 Ch. D. 402, 54 L. J. Ch. 567, [33 W. R. 597]

2. — *Married Woman—Trust for Sale—“Bare Trustee”—Administration Action—Order for Sale—Acknowledgment—Fines and Recoveries Act (3 & 4 Will. 4, c. 74), ss. 77, 79—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 6.* A testator devised his real estate to trustees for sale, who were married women, one of them having married before and the other after the Married Women's Property Act, 1882. Both of them also took beneficial interests in the proceeds of sale. Under the judgment in an action for the administration of the testator's estate, part of the real estate was sold by the trustees, the purchaser paying his purchase-money into Court:—

*Held*, by Bacon, V.C., that the married women were “bare trustees” within s. 6 of the Vendor and Purchaser Act, 1874, and that the conveyance to the purchaser did not require the concurrence of the husbands, or acknowledgment under the Fines and Recoveries Act. *Re DOCWRA. DOCWRA v. FAITH* - 29 Ch. D. 693, 54 L. J. Ch. 1121, [53 L. T. 288, 33 W. R. 574]

#### V. VENDOR AND PURCHASER—FRAUD—

*Misrepresentation.* The Plaintiffs put up an hotel for sale on the 4th of August, 1882, stating in the particulars that it was let to “F. (a most desirable tenant), at a rental of £400 for an unexpired term of 27½ years.” The L. Co. sent M., their secretary, to inspect the property. M. reported that F., from the business he was doing, could hardly pay the rent, and that the town in which it was situate seemed to be in the last stage of decay. The directors, on receiving this report, directed M. to bid up to £5000. M. went and bought for £4700. Before completion, F. went into liquidation, and the L. Co. refused to complete. The Plaintiffs sued for specific performance. It was proved that on the 1st of May, 1882, the Lady Day quarter's rent was wholly unpaid; that a distress was then threatened, and that F. paid £30 on the 6th of May, £40 on the 13th of June, and the remaining £30 shortly before the auction, and that no part of the quarter's rent due at Midsummer had been paid. The chairman of the company was orally examined, and deposed most positively, that the company would not have bought but for the representation in the particulars that F. was a most desirable tenant. Mr. Justice Denman *held* (49 L. T. 532, 48 J. P. 101, 1884 Dig. col. 518), that there was a material misrepresentation, and that the contract had been entered into in reliance upon it. His Lordship accordingly dismissed the action, and on a counter-claim by the Defendants, rescinded the contract:—

*Held*, on appeal, that the description of F., as a most desirable tenant, was not a mere expression of opinion, but contained an implied assertion that the vendors knew of no facts leading to the conclusion that he was not; that the circumstances

#### V. VENDOR AND PURCHASER—FRAUD—continued.

relating to the Lady Day rent shewed that he was not a desirable tenant; and that there was a misrepresentation:—

*Held*, also, that, as the positive testimony of the chairman, that but for this representation the company would not have bought, was not shaken on cross-examination, and was believed by the Judge who saw and heard the witness, the Court of Appeal would not disturb the finding that the representation had induced the company to enter into the contract, and that the appeal must be dismissed. *SMITH v. LAND AND HOUSE PROPERTY CORPORATION* - 28 Ch. D. 7, 51 L. T. 718, [49 J. P. 182 (C.A.)]

— *Misrepresentation—Suppression of facts by purchaser.*

*See FALSE REPRESENTATION.*

#### VI. VENDOR AND PURCHASER—INTEREST—

*Conditions of Sale—“If from any cause whatever”—Vendor's Delay—Purchaser's Possession.* Where the delay in completing a purchase by the stipulated day arises through the vendor's default, and the purchaser then deposits his purchase-money in a bank to a separate account, and gives notice of the fact to the vendor, the purchaser is relieved, as from the receipt of such notice by the vendor, from payment of interest on his purchase-money, notwithstanding that he has been in possession or receipt of the rents under the contract, and that the contract provides that he shall pay interest “if from any cause whatever” the purchase is not completed on the day named. The vendor is, however, entitled to the interest (if any) allowed by the bank on the deposit. So *held*, by Kay, J. *Re GOLD'S & NORTON'S CONTRACT* 52 L. T. 321, 33 W. R. 333, [W. N. (1885) 6]

2. — *Mistake—Repayment—Summons—Jurisdiction—Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9.* A purchaser who has, under his contract, erroneously paid the vendor interest on the purchase-money cannot recover it by summons under sect. 9 of the Vendor and Purchaser Act, 1874, but must proceed by action in the ordinary way. (On appeal the Respondent consented to waive the question of jurisdiction, and the appeal was heard on the merits. (34 W. R. 84, W. N. (1885) 195.) *Re YOUNG & HARETON'S (or HARETON'S) CONTRACT* - 29 Ch. D. 691, [54 L. J. Ch. 1144, 53 L. T. 571, 33 W. R. 516]

#### VII. VENDOR AND PURCHASER—RESCISSION

*Conditions of Sale—Purchase-money—Deposit—Separate Account—Interest.* On a sale of a freehold house by auction one of the conditions of sale provided that “all objections and requisitions in respect of the title, or the abstract, or particulars, or anything appearing therein respectively shall be sent to the vendor's solicitors within fourteen days from the delivery of the abstract, and all objections and requisitions not sent in within that time shall be considered to be waived. If any objection or requisition shall be made and insisted on, which the vendors shall be unable or unwilling to remove or comply with, the vendors shall be at liberty by notice in writing to rescind the sale.” The purchaser accepted the vendors' title as shewn by the

**VII. VENDOR AND PURCHASER — RESCIS-  
SION—continued.**

abstract and sent them a draft conveyance for approval. The vendors then required that the conveyance should be taken subject to certain "covenants, conditions, and restrictions," the nature of which they did not explain, but which, they alleged, were contained in a deed recited in an abstracted deed forming the commencement of title. As the abstract did not shew the existence of any such covenants, conditions or restrictions, and as the conveyance to the vendors' immediate predecessor in title did not in any way refer to them, the purchaser declined to take a conveyance subject to them, without, at all events, being first informed of their nature, whereupon the vendors wrote purporting to rescind the contract:—

*Held*, by Bacon, V.C., upon a summons by the purchaser under the Vendor and Purchaser Act, 1874, that the vendors had no power to rescind, and that the purchaser was entitled to a conveyance without the insertion of the words required by the vendors.

Another condition of sale provided for payment of a deposit and for the completion of the purchase on a certain day; and that "if from any cause whatever," the purchase should not be completed on that day the purchaser should pay interest at 5 per cent. per annum on the remainder of his purchase-money until completion. After receiving the vendor's notice of rescission the purchaser, on the day fixed for completion, placed the balance of her purchase-money to a separate account on deposit with a bank at 2½ per cent. interest, and gave notice of the deposit to the vendors.

*Held*, that the purchaser could not, under the circumstances, be required to pay on actual completion, higher interest than that allowed by the bank. *Re MONCKTON AND GILZEAN* 27 Ch. D. 555, [54 L. J. Ch. 257, 51 L. T. 320, 32 W. R. 973]

2. — *Conditions of Sale—Deficient Title.* A vendor agreed to sell five acres of land under the usual condition that if any purchaser should take any objection which the vendors were unable or unwilling to comply with, the vendors might rescind the contract. They could not make out a title as to an acre and a half of the land:—*Held*, by North, J., that they were entitled to rescind. *HEPPESTALL v. HOSE* 51 L. T. 589, 33 W. R. 30, [49 J. P. 100, W. N. (1884) 199]

3. — *Conditions of Sale.* Land was contracted to be sold under a condition that "if the purchaser should take any objection or make any requisition" which the vendor was "unable or unwilling to remove or comply with," the vendor might rescind the contract.

The purchasers made requisitions, and the vendor, for reasons stated, declined to comply with several of them. The purchasers insisted, and the vendor served them with notice that "being unable or unwilling to remove or comply with" the requisitions, he rescinded the contract. The purchasers in reply denied the vendor's right to rescind, withdrew their requisitions, and stated that they were willing to complete:—

*Held*, affirming the judgment of Bacon, V.C. (27 Ch. D. 172, 53 L. J. Ch. 917, 51 L. T. 109, 32 W. R. 844, 49 J. P. 52, 1884 Dig. col. 515),

**VII. VENDOR AND PURCHASER — RESCIS-  
SION—continued.**

that the contract had been duly rescinded. *Re DAMES AND WOOD* 29 Ch. D. 636, 54 L. J. Ch. 771, [53 L. T. 177, 33 W. R. 685 (C.A.)]

4. — *Error in quantities—Compensation after Conveyance.* One of the conditions of sale of certain building land provided that "any error, misstatement, or omission should not annul the sale, but compensation should be allowed," the amount to be settled by the auctioneer.

A. purchased at the sale three lots, stated in the particulars to contain as to one lot thereof 248 square yards, with a road frontage of 39 feet 3 inches. Each lot was to be sold "subject to re-admeasurement." After the execution of the conveyance and payment of the purchase-money, the lot in question was found to contain only 135 square yards, and a frontage of 18 feet, the property of the vendors. A. claimed rescission of the contract and conveyance, and repayment of the purchase-money with interest: or, in the alternative, damages by way of compensation.

*Held*, by Bacon, V.C., that A. was not entitled to rescind the contract, but was entitled to compensation at 22s. 6d. per square yard (that being the rate at which he had purchased the land), and to damages for actual loss and costs. *FLEWITT v. WALKER* — 53 L. T. 287, 33 W. R. 894, [W. N. (1885) 151]

5. — *Specific Performance—Contract for Sale of Land—Conditions—Objection to Conveyance—Vendor's Right to rescind.* Trustees of a will put up land for sale, subject to a condition that, if any objection or requisition as to (*inter alia*) title, or abstract, or conveyance should be insisted on, and the vendors should be unable or unwilling to remove or comply therewith, they should be at liberty to annul the sale. The abstract delivered to the purchaser showed that the conveyance to the vendor's testator was of the land, together with a wall on the east side of it, "which wall is to be ever hereafter repaired and kept in repair" by the testator, his heirs, and assigns. This obligation was not mentioned in the particulars and conditions of sale, and the purchaser did not know of it until the delivery of the abstract. He accepted the title, and tendered to the vendors the draft of a conveyance to himself of the land with the wall, omitting all reference to the obligation to repair the wall. The vendors' solicitors added the words "subject to and with the liability for ever to repair the wall" by the purchaser, his heirs, and assigns. The purchaser would not agree to the addition, and the vendors thereupon gave notice to rescind the contract. The purchaser then brought an action for specific performance of the contract, claiming the right to a conveyance without the additional words:

*Held*, by Pearson, J., that, if the obligation to repair the wall ran with the land, it was immaterial whether it was mentioned in the conveyance or not, because the purchaser would be bound by it in either case; but that, if it did not run with the land, the vendors, not having mentioned it in the particulars of sale, could not impose it on the purchaser. Consequently, the vendors were not entitled to rescind the contract.

*Semble*, that a condition of sale giving the vendor a right to rescind the contract, in the event of his

**VENDOR AND PURCHASER—continued.**

— Sale of share of lunatic in realty.

See LUNATIC. 7.

— Solicitors' remuneration.

See SOLICITOR—BILL OF COSTS. 6, 9, 12, 13.

**VENUE.**

See PRACTICE—TRIAL. 2, 5, 10, 11.

— Action against constable.

See CONTAGIOUS DISEASES ACT. 1.

**VESTING**—Gift by will.

See WILL—CONSTRUCTION. 22, 49, 50.

— Settlement—"Payable" meaning "vested."

See SETTLEMENT—CONSTRUCTION. 5.

**VESTING ORDER**—Trustee Acts.

See TRUSTEE ACTS.

**VESTRYMAN**—Qualification—Rating—Occupation.

See METROPOLIS. 2.

**VICTORIA**—Law of.

See COLONIAL LAW. 13, 14.

**VOLUNTARY CONVEYANCE**—*Assignment of Lease by Husband to Trustees for Wife—Renewal by Husband in his own name*—27 Eliz. c. 4—*Statute of Frauds* (29 Car. 2, c. 3), ss. 7, 8.] In 1856 a corporation, in consideration of a sum by way of fine, and of certain covenants by the lessee for payment of rent, rates and taxes, and for repairing and maintaining the premises, granted a lease of a house for forty years, at a yearly rent of 5s. 6d.

In 1865 this lease was assigned to L., who the same year assigned it, together with other property, to trustees for his wife for her separate use, the consideration being expressed to be "natural love and affection." L., however, remained in possession of the house, and in 1870 surrendered the lease to the corporation, who, in consideration of a fine, granted a new lease to L., in his own name, for forty years. L. died in 1878. *Held*, by Kay, J. (53 L. J. Ch. 928, 51 L. T. 564, 32 W. R. 1013, W. N. (1884) 186, 1884 Dig. col. 522), (1) that the assignment by L. to his wife in 1865 was not a voluntary settlement within 27 Eliz. c. 4; (2) that L.'s executors must be treated as trustees of the renewed lease for his widow's benefit, for he obtained the renewal in virtue of the tenant-right in respect of the original lease, and was thereupon in possession of the property as agent of the trustee or of his wife, and therefore in a fiduciary position.

*Held*, by the Court of Appeal, that the renewed lease was held by L. as constructive trustee for his wife, and that, the trust arising by "operation of law," it was within the exception of s. 7 of the Statute of Frauds, so as to make the absence of writing immaterial.

*Held*, also, that as L.'s intention was to benefit his wife, she was not bound to repay to her husband's estate the premium paid by him for the renewal.

*Quære*, whether the surrender of the old lease was a "conveyance" within 27 Eliz. c. 4, s. 1, which would prevail over the previous settlement, assuming such settlement to be a voluntary conveyance within the same statute. *Re LULHAM. BRINTON v. LULHAM.* 53 L. T. 9, 33 W. R. 788

[(C.A.)

**VOLUNTARY CONVEYANCE—continued.**

2. — *Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 47 (i.), (iii.)—*Transfer of Shares to Son.*] E. P. handed to his son a sum of money for investment in shares in a ship. The son so invested the money, and afterwards sold the shares for £450, which he handed to his sister upon a sort of implied trust for the benefit of their father and mother.

*Held*, by Mathew, Cave, and Wills, JJ., that handing the sum for investment was a "conveyance or transfer" within the above section. *Ex parte HARVEY. Re PLAYER.* (No. 1)

[54 L. J. Q. B. 553

3. — *Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 47 (i.), (iii.)—*Advance to Son to start a Business.*] E. P., about two years before he became a bankrupt, advanced to his son £650 to purchase building stock and set up in business. The son found £150 for capital, and carried on the business, and at the date of the bankruptcy was possessed of stock and capital to the value of about £500.

*Held*, by Mathew, Cave, and Wills, JJ., that this was not a voluntary settlement within the above section. *Ex parte HARVEY. Re PLAYER.* (No. 2) — — — 54 L. J. Q. B. 554

4. — *Post-nuptial settlement—Consideration—Bargain*—27 Eliz. c. 4.] By a post-nuptial settlement certain freeholds which had previously belonged as to one portion to the wife for life with remainder to the husband in fee, and as to the other portion to the husband in fee, were re-settled by the husband and wife upon trust for the wife for life, with remainder to the husband for life, with other remainders over. The deed recited the title to the freeholds and the desire of the parties for the re-settlement.

*Held*, by North, J., that there was, as between the husband and wife, clear evidence of a bargain, and the deed was for valuable consideration, and therefore not voluntary within the above statute. *SCHREIBER v. DINKEL.* — — — 54 L. J. Ch. 241,

[52 L. T. 130, W. N. (1884) 236

5. — *Rectification—Power of Revocation.*] By a voluntary settlement property was assigned to trustees in trust for the settlor for life, remainder for any wife he might marry for life, with remainders to his issue, and in default or failure of issue in trust for his paternal next of kin:—

*Held*, by North, J., that though a settlement was proper to be made, and though the settlor understood the terms of this settlement, yet as his attention was not drawn to the fact that he might have had a power of disposition over the property in default or failure of issue, such a power ought to be given, and the settlement must be rectified accordingly.

*Held*, also, that, as the trustees (who were made defendants to the action for rectification) had acted properly, and were bound to come before the court to uphold the settlement, they were entitled to a charge on the funds settled for their costs. *JAMES v. COUCHMAN* 29 Ch. D. 212, 54 L. J. Ch. 836,

[52 L. T. 344, 33 W. R. 452.

— *Post-nuptial settlement—Restraint on anticipation—Election—Compensation.*

See SETTLEMENT—AFTER-ACQUIRED PROPERTY. 4.

**VOLUNTARY CONVEYANCE—continued.**

— Void against creditors—13 Eliz. c. 5.

See FRAUDULENT CONVEYANCE.

**VOLUNTARY WINDING-UP.**

See COMPANY—VOLUNTARY WINDING-UP.

**VOTE**—General meeting of company—Poll.

See COMPANY—VOLUNTARY WINDING-UP. 3, 4.

**VOTE FOR PARLIAMENT.**

See PARLIAMENT.

**W.****WAGER.**

See GAMING.

— Broker — Contract for payment of "Differences"—Illegality.

See CONTRACT. 8, 9.

**WAGES—Seamen's.**

See SHIP—WAGES.

**WALL**—Retaining, of railway—Power to underpin buildings on adjoining lands.

See RAILWAY COMPANY. 10.

— Sea wall — Repair — Frontager's liability — Act of God.

See SEWERS.

**WARD OF COURT.**

See INFANT. 9, 10.

**WARRANT—Admiralty.**

See PRACTICE—ADMIRALTY. 18, 19.

**WARRANTY**—Implied—Sale of goods for particular purpose.

See DAMAGES. 6.

— Lease of furnished house—Implied warranty.

See LANDLORD AND TENANT — LEASE. 3—5.

LANDLORD AND TENANT — LIABILITIES. 1.

— Sale of goods.

See SALE OF GOODS. 4—6.

**WASTE—Tenant for Life—Permissive Waste—Liability—Claim by Trustees—Time—3 & 4 Will. 4, c. 42, s. 2.]** W. devised his realty to trustees upon trust for his widow for life, with remainder over, in events which happened, to A. for life, and, in events which happened, to B. for life, with remainders to his children, if any, in tail, with remainders over. The will contained a direction that each tenant for life or in tail of any of the hereditaments should, during his estate, keep the buildings thereon in substantial repair; and if any such person should neglect to effect such repairs within six months, after being thereunto requested by the trustees, the trustees should be at liberty to effect such repairs.

W.'s widow was in possession of the hereditaments until her death in June, 1883. Her will was proved in Feb. 1884. She had omitted to repair the buildings. More than six months after her death, but within six months after probate of her will, a claim was carried in against her estate, in an administration action, in respect of the omission to repair, the claimants being the trustees of the will, and the then equitable tenant for life. The claim was resisted on three grounds: (1) that the

**WASTE—continued.**

deceased tenant for life could not be made liable for permissive waste; (2) that the right to recover, if any, was in the remainderman, and that therefore the claim was not preferred by the proper parties; and (3) that the claim was too late, having been brought more than six months after the executor of the widow's will had taken upon himself the administration of her estate, within the meaning of the above section:—

*Held*, by Kay, J., that the executor of the deceased tenant for life was liable for such omission to repair as was a breach of the condition in the will. *Woodhouse v. Walker* (5 Q. B. D. 404, 42 L. T. 770) followed.

*Held*, also, that as the trustees had an interest in protecting the ultimate equitable estate, the claim was properly brought by them; and that, as it was not shewn that the executor of the deceased tenant for life had taken upon himself the administration of her estate at any time before the probate of her will, the probate must be deemed to be the time at which he had taken upon himself such administration, and the claim was therefore not too late. *Re WILLIAMES (or WILLIAMS). ANDREW v. WILLIAMES* [52 L. T. 41, W. N. (1884) 242 (affirmed by [the C.A., W. N. (1885) 158]

**WATER—Overflow—Tidal River—Obligation of Conservancy Commissioners to protect Lands—Lands adjoining reclaimed Lands—Damage resulting from act of Owner of Lands—Water flowing through cutting in Embankment.]** The owner of a farm, between which and a tidal river were lands that had been reclaimed by Conservancy Commissioners from the river, sued such Commissioners for damage caused to his farm by the river overflowing a sea wall between the reclaimed lands and the river, and flowing over the reclaimed lands over his farm:—*Held*, by Mathew and Smith, JJ., that as the Commissioners were by their Acts under the obligation to maintain and repair the sea wall, they were liable, not only for any damage caused to the reclaimed lands, but to lands beyond such lands, by reason of the sea wall being insufficient in height to prevent an overflow of the river:—*Held*, further, that the Plaintiff was not deprived of his right of action by the fact of the water having flowed from the reclaimed lands on to his farm, in consequence of his landlord's having made a cutting through an embankment in order to obtain access to the reclaimed lands. *BRAMLETT v. TEES CONSERVANCY COMMISSIONERS* 49 J. P. 214.

2. — Overflow — Damage — Obstruction of surface water by railway embankment—Acquisition of easement. *LOUISVILLE, & C., Ry. Co. v. HAYS*

[47 Amer. R. 291 (U.S.)]

See also *NININGER v. NOBWOOD, ib. 412.*

3. — Riparian Owner—Abstraction of Water by Non-riparian Owner—Absence of Damage—Right of Action—Injunction—Rights of Riparian Owner in Artificial Stream.] The owner of land not abutting on a river with the licence of a riparian owner took water from the river, and after using it for cooling certain apparatus, returned it to the river unpolluted and undiminished:—*Held*, affirming the decision of Pollock, B. (23 Ch. D. 566, 52 L. J. Ch. 608, 48 L. T. 734, 31 W. R. 603, 47 J. P. 534, 1883 Dig. col. 435), that a lower riparian owner could not obtain an injunction against the

**WATER—continued.**

landowner so taking the water, or against the riparian owner through whose land it was taken.

Observations on the rights which can be acquired by a riparian owner in an artificial stream. *KENSIT v. GREAT EASTERN RAILWAY COMPANY* 27 Ch. D. [122, 54 L. J. Ch. 19, 51 L. T. 862, 32 W. R. (885 (C.A.))

4. — *Underground Water—Pollution of Well—Nuisance—Injunction.* No one has a right to use his own land in such a way as to be a nuisance to his neighbour, and therefore if a man puts filth or poisonous matter on his land, he must take care that it does not escape so as to poison water which his neighbour has a right to use, although his neighbour may have no property in such water at the time it is fouled.

The Plaintiff and Defendant were adjoining landholders, and had each a deep well on his own land, the Plaintiff's land being at a lower level than the Defendant's. The Defendant turned sewage from his house into his well, and thus polluted the water that percolated underground from the Defendant's to the Plaintiff's land, and consequently the water which came into the Plaintiff's well from such percolating water when he used his well by pumping, came adulterated with the sewage from the Defendant's well:—

*Held*, reversing the decision of Mr. Justice Pearson (26 Ch. D. 194, 54 L. J. Ch. 127, 50 L. T. 230, 32 W. R. 589, 48 J. P. 535, 1884 Dig. col. 524), that the Plaintiff had a right of action against the Defendant for so polluting the source of supply, although until the Plaintiff had appropriated it, he had no property in the percolating water under his land, and although he appropriated such water by the artificial means of pumping. *BALLARD v. TOMLINSON* 29 Ch. D. 116, 54 L. J. Ch. 454, [52 L. T. 942, 33 W. R. 533, 49 J. P. 692 (C.A.)]

— *Fouling stream—Quia timet action.*

*See NUISANCE.* 2.

— *Obstruction to watercourse—Injunction.*

*See PRACTICE—INJUNCTION.* 1.

— *Watercourse—Whether a “sewer.”*

*See PUBLIC HEALTH ACTS.* 16.

**WATER RATE—Assessment of—Domestic Purposes, Supply for—Annual Value—Premises used as Public-house—Licence—Premium.** By the special Act of a water company it was provided that water should be supplied for domestic purposes by the company at a rate per cent. upon the annual value of the dwelling-house or other place supplied, that a supply of water for domestic purposes should not include a supply of water for, among other things, any trade or manufacture, or business requiring an extra supply of water, and that the company might furnish water for other than domestic purposes on such terms as might be agreed on between the company and the consumer.—The company supplied water for domestic purposes to a house occupied as a licensed public-house. The company contended that the annual value of the premises as a licensed public-house should be taken as the basis of the water-rate payable in respect of such supply, and that therefore the fact of the premises being licensed, and a premium which had been paid for the lease of the premises as a public-house ought to be taken into consideration in fixing

**WATER RATE—continued.**

the value. The occupier contended that such water-rate should be based upon the value of the premises for domestic purposes only:—*Held*, by Coleridge, C.J., and Smith, J., that the contention of the company was correct. *WEST MIDDLESEX WATERWORKS CO. v. COLEMAN.* *COLEMAN v. WEST MIDDLESEX WATERWORKS CO.* 14 Q. B. D. 529, [54 L. J. M. C. 70, 52 L. T. 578, 33 W. R. 549, [49 J. P. 341]

2. — *Bristol Waterworks Acts, 1862 and 1865—“Annual Rack-rent or Value”—“Gross Sum assessed to the Poor-rate”—Pleasure Garden attached to Dwelling-house—Extra Charge for “a pipe and tap or other apparatus” used in the Garden.* Sect. 68 of the Bristol Waterworks Act, 1862, enacts that the company shall furnish to every occupier of a private dwelling-house within their limits a sufficient supply of water for the domestic use of such occupier, at certain annual rents or rates according to the “annual rack-rent or value of the premises so supplied,”—such supply (by sect. 71) not to include, amongst other things, a supply of water “for watering gardens by means of a tap, tube, pipe, or other such like apparatus.” And sect. 32 of the Bristol Waterworks Amendment Act, 1865, enacts that “if any dispute shall arise as to the amount of the annual rent or value of any dwelling-house or premises supplied with water by the company, such dispute shall be decided by two justices: provided that the amount of the annual rack-rent or value to be fixed by such justices shall not be less than the gross sum assessed to the poor-rate, or less than the sum actually paid for such dwelling-house or premises.”—A dwelling-house and garden in the occupation of the owner were assessed to the poor-rate as follows,—“Gross estimated rental, £240.” “Rateable value, £204.” It was proved that the value of the house without the garden would be 10 per cent. less, and that the owner contracted to pay, and did pay, £1 ls. annually for the watering by means of a pipe and tap in the garden which surrounded the dwelling-house and was occupied and assessed therewith:—*Held*, by Mathew and Smith, JJ., upon a case stated by the justices, that the words “gross sum assessed to the poor-rate” meant the “gross estimated rental,” and not “rateable or net value;” and that the water-rent was chargeable upon the gross estimated rental of “the premises,” including the pleasure garden occupied with the house, and not merely upon the dwelling-house itself, the extra charge for the garden supply being for using a pipe and tap. *BRISTOL WATERWORKS CO. v. UREN.* *UREN v. BRISTOL WATERWORKS CO.* [15 Q. B. D. 637, 54 L. J. M. C. 97, 52 L. T. [655, 49 J. P. 564]

*See also WATERWORKS CLAUSES ACT.*

**WATERWORKS—Rateable value.**

*See POOR RATE.* 8.

**WATERWORKS CLAUSES ACT—Dispute as to Water Rate.** Where a dispute has arisen as to the amount of the water rate payable by an occupier of premises to a water company (whose special Act incorporated the Waterworks Clauses Act, 1847), the determination of the annual value of the premises supplied, by two justices, under s. 68 of the Act of 1847, is a condition precedent to the right of the occupier to sue the company for

**WATERWORKS CLAUSES ACT—continued.**

cutting off the water, and for the amount alleged to have been paid in excess. *WHITING v. EAST LONDON WATERWORKS CO.* - 1 C. & E. 331

2. — *Distress for Water Rates*—46 Geo. 3, c. cxix.; 50 Geo. 3, c. cxviii.; 10 & 11 Vict. c. 17, ss. 74, 85; 8 & 9 Vict. c. 20, s. 140; 15 & 16 Vict. c. cliz.] A local Waterworks Act empowered a company to distrain for water rates for an agreed amount. A later Act limited the rates to such sums as should be "reasonable." Under the Waterworks Clauses Act, 1847, which incorporates 8 & 9 Vict. c. 20, s. 140, water rates under £20 are to be recovered by means of a distress warrant issued by justices. A third Act of the company in 1852 incorporated the Waterworks Clauses Act, but expressly preserved all the powers conferred by the former Acts:—

*Held*, by Coleridge, C.J., and Smith, J., that the right of the company to levy their own distress was kept alive by the saving clause in the Act of 1852, and that the distress by justices' warrant was additional to, and not in substitution for, the company's original remedy. *RICHARDS v. WEST MIDDLESEX WATERWORKS CO.* 15 Q. B. D. 660, [54 L. J. Q. B. 551, 33 W. R. 902, 49 J. P. 631]

3. — *Injunction—Jurisdiction*—10 & 11 Vict. c. 17, s. 68.] Although the statutory remedy provided by sect. 68 of the Waterworks Clauses Act, 1847, for the settlement by two justices of disputes as to the annual value of a tenement supplied with water, and the special remedy by penalties given by sect. 43 against a company for withholding water, have not ousted the general jurisdiction to restrain the company by injunction from cutting off the supply of water pending proceedings for settling a dispute as to value, such injunction will not be granted on the application of an owner or occupier who will not undertake to commence proceedings with due speed before the justices under sect. 68. *HAYWARD v. EAST LONDON WATERWORKS COMPANY* - 28 Ch. D. 138, [54 L. J. Ch. 523, 52 L. T. 175, 49 J. P. 452]

**WAY**—Right of—Prescription Act.

See **PRESCRIPTION**.

— *Scotch law—Prescription.*

See **SCOTCH LAW**. 10.

**WELL**—Pollution of—Underground water.

See **WATER**. 4.

**WIFE.**

See **HUSBAND AND WIFE**.

**WILD BIRDS PRESERVATION ACT, 1880—**

*Authority of Owner or Occupier of Land*—43 & 44 Vict. c. 35, s. 3.] R., with the authority of the occupier of certain land, shot wild birds thereon, which had been taken on other lands without the authority of the owners, or occupiers thereof:—

*Held*, by Grove and Hawkins, J.J., that R. was guilty of an offence under the above section, not coming within the exemption contained therein. *REG. v. GILHAM, or WARR v. GILHAM* 52 L. T. 328, [49 J. P. 357, 15 Cox, C. C. 719]

**WILL** :—

I. **ABSOLUTE GIFT.**

II. **ADEMPMENT.**

III. **ANNUITY.**

IV. **CHARGE OF DEBTS (AND LEGACIES).**

V. **CONDITION.**

**WILL** :—*continued.*

VI. **CONSTRUCTION.**

VII. **ESTATE IN REALTY.**

VIII. **EXECUTORS.**

IX. **ONEROUS DEVISE.**

X. **PERPETUITY.**

XI. **RESIDUE.**

XII. **REVOCATION.**

XIII. **TRUSTEES.**

I. **WILL—ABSOLUTE GIFT**—*Bequest to M. for her life, and to her heirs after her*—"Heirs"—*Persons designatæ—Gift over.*] A testatrix bequeathed a sum of money to "M. for the term of her life, and to her heirs after her:" and, in case M. should not survive her, the testatrix bequeathed the said sum to E. for her life, and at the death of E., to certain other persons:—

*Held*, that the legacy did not, upon the death of M., who survived the testatrix, pass to her heir-at-law as a *persona designata*, but that M. took the bequest absolutely. *ATKINSON v. L'ESTRANGE*

[15 L. R. Ir. 340]

2. — *Devise in fee—Devise over if devisee should die without leaving lawful issue, to devisee's next heir-at-law—Repugnancy.* *Re PARRY AND DAGGS* - W. N. (1885) 3, 193 (C.A.)

3. — *Gift of Share to Niece, the interest to be paid to her during Life, and upon her Death the Dividends to be paid towards the Maintenance and Education of her children until the youngest should attain twenty-one—Children entitled as joint tenants until the age of twenty-one—Niece's representatives entitled to the corpus of the share.* *Re EASLEY'S ESTATE. DRAKE v. DRAKE*

[W. N. (1885) 99]

4. — *Life Interest—Remainder.*] A testatrix by her will appointed two-fifths of certain property to trustees upon trust to pay the income to her son until he should attain the age of forty years, and then to hold the same in trust for her son, his executors and administrators; provided that in case her son should assign his share in the property, then the aforesaid bequests should be void, and the two-fifths should be held upon the trusts declared as to the other three-fifths. The son died before he attained the age of forty without having assigned:—

*Held*, by North, J., that the two-fifths vested in trust for the son absolutely so as to pass by his will. *SCOTNEY v. LOMER* - 29 Ch. D. 535,

[54 L. J. Ch. 558, 52 L. T. 747, 33 W. R. 633]

5. — *Life Interest.*] Under a gift by a testator to his wife, whom he appointed sole executrix, of all his realty and personalty "to and for her own absolute use and disposal during her life:"—*Held*, by Chitty, J., that the widow was absolutely entitled. *Re BUSH. SMITH v. HARRIS*

[W. N. (1885) 61]

6. — *Life Interest—Bequest to A. and the heirs of his body—Absolute Gift on reaching twenty-eight—Gift over on death without issue.* *Re EVANS. EVANS v. EVANS* - W. N. (1885) 152

7. — *Remainder—Inconsistent Clauses.*] M. by her will devised certain realty to trustees upon trust to pay to or otherwise permit S. to receive the rents and profits thereof for her life, and after

**I. WILL—ABSOLUTE GIFT—continued.**

her decease, upon trust to pay to or otherwise permit B. to receive the rents and profits thereof for her life, if she should be living at the time of the decease of the said S., but if she should be then dead, upon trust for two nieces, whom she named, absolutely as tenants in common; and the testatrix gave all her residuary estate to the said B. absolutely.

S. survived the testatrix, and B. survived S., and consequently her life interest took effect. She was now dead, the two nieces being living, and the question was raised whether the estate went to the two nieces, or whether, inasmuch as B. did not die in S.'s lifetime, the gift to them failed, and the estate went to B.'s representatives, being given to her absolutely by the joint operation of the gift of the life interest and of the residue:—

*Held*, by Kay, J., that the property went to the two nieces, the gift to them not being a contingent remainder, but an imperfect expression of the testatrix's intention that, subject to the two life-interests, the nieces were to take absolutely. *Re MARTIN. SMITH v. MARTIN* 54 L. J. Ch. 1071, [53 L. T. 34, W. N. (1885) 135]

— Gift of personality—"Heirs."

*See WILL—CONSTRUCTION.* 15.

— Or executory trust.

*See WILL—CONSTRUCTION.* 11.

**II. WILL—ADEMPTION—Legacy—Moral Obligation other than Parental.]** The doctrine of ademption of legacies founded on parental or quasi-parental relation applies also to cases where a moral obligation other than parental or quasi-parental is recognised in the will, though without reference to any special application of the money.

A testatrix by her will bequeathed to a niece of her deceased husband £500 with these words, "according to the wish of my late beloved husband," and she afterwards in her lifetime paid £300 to such legatee, with a contemporaneous entry in her diary that such payment was a "legacy from" the legatee's "uncle John":—

*Held*, that the presumption was that such legacy was adeemed to the extent of £300, and that such presumption of ademption *pro tanto* only was not displaced by evidence that more than a year before the £300 was given the testatrix had said, that the legatee when asked by the testatrix whether she would rather receive £300 down than a larger sum after the testatrix's death, had replied that she would prefer the £300 down. *Re POLLOCK. POLLOCK v. WORRALL* 28 Ch. D. 552, 54 L. J. Ch. 489, [52 L. T. 718 (C.A.)]

**III. WILL—ANNUITY—Whether for Life or Perpetual—Yearly sum given to A. out of Rent reserved on lease in perpetuity.]** A testator being the lessor of the lands of B., which were held under him by a lease for lives renewable for ever at a yearly rent of £46, made a will containing the following dispositions relating to these lands:—"I hereby give and bequeath unto my three daughters" [naming them] "two years' profit-rent to each out of B., that is to say, £60 to each, to be paid as the rent becomes due after my decease. I order that in case any of my daughters should die before they come to the age of twenty-one years, her part should be divided between the surviving

**III. WILL—ANNUITY—continued.**

daughters above mentioned. I also will and bequeath unto my six sons" [naming them] "all my interest in M. farm and T. farm, and £5 per annum to each out of B. after my daughters are paid off." Upon the argument of a demurrer, it not expressly appearing from the pleadings whether the lessor was liable to any or what head-rent in respect of B.:—

*Held*, that the annuities of £5 each to the testator's sons were not perpetual annuities, but were for the lives of the annuitants only. *WHITTEN v. HANLON* - - - 16 L. R. Ir. 298

— Insufficient estate—Abatement.

*See EXECUTOR—ADMINISTRATION.* 1.

— Limitation.

*See LIMITATIONS, STATUTES OF.* 11.

**IV. WILL—CHARGE OF DEBTS AND LEGACIES**

— *Legacies charged on Realty—Exoneration of Personality.]* N. by his will gave to his wife an annuity of £60, issuing and payable out of his realty thereafter devised to his three sons. He then gave to his daughter A. a legacy of £500, and to each of his sons H. and S., and to each of his daughters M. and E., a legacy of £1600, to be paid, with interest, two years after his death. And he thereby charged and made chargeable his realty, thereafter devised to his three sons J., T., and F., with the payment of the said legacies and interest. He gave his personality (charged with the payment of debts, funeral, and testamentary expenses, &c.) unto his said sons J., T., and F., and gave all his residuary realty (subject to mortgages, and subject to and charged with the payment of the annuity of £60, and the legacies to his sons H. and S., and his daughters M. and E., and also the legacy of £500 to his daughter A., and subject also, in aid of his personality, to the payment of his debts, funeral and testamentary expenses, &c.) equally between his said sons J., T., and F.:—

*Held*, by Bacon, V.C., that the legacies were charged on the realty exclusively in exoneration of the personality. *Re NEEDHAM. ROBINSON v. NEEDHAM* - - - 54 L. J. Ch. 75

— Appointment to object of power subject to charge—Advancement—Election.

*See ELECTION.* 6.

**V. WILL—CONDITION—Discretion of Executors as to Conduct of Legatee—Declaration of Dissatisfaction.]**

A testator bequeathed to his son A. a sum of £2000 if he should conduct himself to the satisfaction of the testator's executors. He also devised and bequeathed the residue of his property to his executors upon trust for the use and benefit of all his children, including his son A., in equal shares, and declared that if it should happen that his son A. should not conduct himself to the satisfaction of his executors or the survivor of them, then, that he should not be entitled to receive any portion of the residuary estate; and in that case, a declaration in writing, signed by the said executors or the survivor of them, of their, her, or his dissatisfaction with him, should be conclusive evidence that he was not to receive any portion thereof:—

*Held*, that a declaration of dissatisfaction signed by two of the executors, who alone proved the will, leave having been reserved for the remaining



**V. WILL—CONDITION—continued.**

three, was sufficient to disentitle A. to the legacy and to a share of the residue. *DELANY v. DELANY* [15 L. R. Ir. 55]

2. — *Forfeiture—Name Clause—Settlement—Fee Simple Estate—Repugnancy.* A testatrix who died in 1832 settled her freehold estate upon her grandchildren, a share becoming vested in one of them, Lucy, in fee simple in possession; and the will contained a proviso that any person becoming entitled in possession to the estate should, within one year thereafter, take and use the name of Jones, and that in case any such person should refuse or neglect to use the name of Jones within one year, then the estate limited to him or her should be void, and should first go to her niece, Catherine Jones, since deceased, for her life, and after her decease to the person or persons next in remainder under the trusts of the will, in the same manner as if the person so refusing were dead. Lucy was twice married, and neither she nor either of her husbands ever took the name of Jones:—*Held*, by Pearson, J., that the gift being in fee simple, and there being necessarily no person entitled in remainder, the name clause was void, and that there had consequently been no forfeiture by Lucy. *Re BROOKE. MUSGRAVE v. BROOKE*

[26 Ch. D. 792, 54 L. J. Ch. 102, 33 W. R. 211]

3. — *Forfeiture—Restraint of marriage.* *CRAWFORD v. THOMPSON* 46 Amer. R. 598 (U.S.)

4. — *Repugnancy—Devise in Fee—Restraint on Alienation.* A condition in absolute restraint of alienation annexed to a devise in fee, even though its operation is limited to a particular time, e.g., to the life of another living person, is void in law as being repugnant to the nature of an estate in fee.

*Re Macleay* (L. R. 20 Eq. 186, 44 L. J. Ch. 441, 32 L. T. 682, 23 W. R. 718) commented on.

*Large's Case* (2 Leon. 82, 3 Leon. 182) explained.

A testator devised an estate to his son in fee, provided always that if the son, his heirs or devisees, or any person claiming through or under him or them, should desire to sell the estate, or any part or parts thereof, in the lifetime of the testator's wife, she should have the option to purchase the same at the price of £3000 for the whole, and at a proportionate price for any part or parts thereof, and the same should accordingly be first offered to her at such price or proportionate price or prices. The real selling value of the estate was, at the date of the will and at the time of the testator's death, £15,000:—

*Held*, by Pearson, J., that the proviso amounted to an absolute restraint on alienation during the life of the testator's widow; that it was void in law; and that the son was entitled to sell the estate as he pleased, without first offering it to the widow at the price named in the will. *Re ROSHER. ROSHER v. ROSHER* - - - 26 Ch. D. 801, [53 L. J. Ch. 722, 51 L. T. 785, 32 W. R. 821]

— Conditional life estate—Invalid condition.

*See SETTLED LAND ACTS.* 11.

— Forfeiture on bankruptcy—Person having powers of tenant for life.

*See SETTLED LAND ACTS.* 12.

**V. WILL—CONDITION—continued.**

— Life estate determinable on bankruptcy

*See WILL—CONSTRUCTION.* 10.

— Repairs—Devise—Permissive waste.

*See WASTE.*

**VI. WILL—CONSTRUCTION—Advancement by Parent to Child—Debt due to Testator, whether released by Will—Bequest of Residue on Trust to pay Income to Widow, and subject thereto for equal Distribution among Children—Clause providing that Advances made to Children shall be brought into Hotchpot.** A testator had advanced by way of loan to the Defendant, one of his children, a sum of £2000, upon which sum interest was paid during the testator's lifetime. The testator by his will devised and bequeathed his property, both real and personal, to trustees on trust to permit his widow to receive the income actually produced by such property, however constituted or invested, during widowhood, and subject thereto on trust for his child, if only one, or all his children equally if more than one, who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry. The will contained a proviso that any advances made by the testator to any child or to the husband of any child in his lifetime, together with interest on such advances, as charged against such child or her husband in his private memorandum book in his own handwriting, should, according to the amount thereof, be taken in full or in part satisfaction of his or her share in the testator's property, unless the testator should otherwise declare by writing under his hand. The sum advanced to the Defendant was charged against him in the testator's memorandum book, and such book contained an entry as follows: "This is the memorandum book named in my will as containing the advances made by me to my children or their husbands to be taken in satisfaction of their respective shares in my estate":—*Held*, by Brett, M.R., and Lindley, L.J., Cotton, L.J., dissenting, that the testator's widow was entitled to receive from the Defendant during her life, as part of the annual income given to her by the will, interest on the said sum of £2000.—*Judgment of the Queen's Bench Division* (13 Q. B. D. 246, 53 L. J. Q. B. 415, 32 W. R. 878, 1884 Dig. col. 535) affirmed. *LIMPUS v. ARNOLD* - - - 15 Q. B. D. 300, [54 L. J. Q. B. 85, 33 W. R. 537 (C.A.)]

2. — *Ambiguity—Extrinsic Evidence—Description of Devised Lands.* A testator devised "the townland of T., including the house, offices, and demesne, &c., of W." In addition to the demesne of W., which, in fact, formed part of T., the testator was entitled to adjoining lands called M. & C.:—*Held*, that extrinsic evidence that the testator treated M. & C. as part of the demesne of W. was inadmissible for the purpose of shewing that M. & C. passed under the devise. *KING v. KING* - - - 13 L. R. Ir. 531

3. — *Ambiguity—Parol evidence admissible to explain.* *CHAMBERS v. WATSON*

[46 Amer. R. 70 (U.S.)]

4. — *Blank—Supplying—Right of Court to look at Original Will.* A testatrix in making her will used a law stationer's form, which was partly in print, blanks being left in it which were

VI. WILL—CONSTRUCTION—*continued.*

to be filled up by the person who made use of it. After directing that her debts and funeral and testamentary expenses should be paid by her executrix thereinafter named, the testatrix gave all her property both real and personal "unto to and for her own use and benefit absolutely, and I nominate, constitute, and appoint my niece Catherine Hellard to be executrix of this my last will and testament":—

*Held*, by Kay, J., and by the Court of Appeal, that there was an effectual gift of the residue to Catherine Hellard.

Per Lord Esher, M.R., and Baggallay, L.J.:—For the purpose of construing a will the Court is entitled to look at the original will as well as at the probate copy. *Re HARRISON. TURNER v. HELLARD* [30 Ch. D. 390 (C.A.)]

5. — "*Business and Goodwill.*" The testator directed his executors to assign and transfer to H. "my said business and the goodwill thereof, with the premises in which the same shall be carried on":—

*Held*, that the capital of the testator employed in the business at his death, and the stock-in-trade, did not pass to H. under this bequest, and that the debts due to the business formed part of the capital, but that sacks, horses and drays did pass to H. *DELANY v. DELANY* - - - 15 L. R. Ir. 55

6. — "*Children*" — *Illegitimate Child* — *Class.* Testator by his will bequeathed to M. B. B. "daughter of my nephew J. B." £200; and to T. B., "son of the said J. B.," £100. He directed his trustees to stand possessed of his residue upon trust for "all and every the children and child" of R. C. and J. B. respectively. By a codicil testator revoked the bequest of £200 "to my great niece" M. B. B., and the bequest of £100 "to my great nephew," T. B., and instead thereof bequeathed to M. B. B. £100; to T. B. £100; and to A. B. "another daughter of my nephew J. B.," £100.

M. B. B. was illegitimate; T. B. and A. B. were legitimate:—

*Held*, by Bacon, V.C., that M. B. B. was sufficiently indicated as one of the persons who was to participate in the residue.

*Megson v. Hindle* (15 Ch. D. 198) distinguished. *Re BYRON (or BYRON). DRUMMOND v. LEIGH* [30 Ch. D. 110, 55 L. J. Ch. 30]

7. — "*Children*," gift to, of supposed marriage—*Illegitimate child en ventre sa mère at date of testator's death.* G. B. in 1865 went through the ceremony of marriage with J. C., who had been previously married to T. C., but had separated from him. Shortly afterwards G. B. made his will, leaving his residuary property upon trust for J. C., whom he called his "dear wife," for her life or until her marrying again, and on the happening of either event, then upon trust for his "child or children" at 21, and the lawful issue of such as might die before 21; but in case he should die without leaving such child or children, then upon trust for the lawful children of his brothers and sisters mentioned in the will, and their lawful issue. G. B. knew, both at the time of his supposed marriage and at the date of his will, that doubts existed as to whether T. C. was actually dead.

G. B. died in 1867, at which time J. C. was

VI. WILL—CONSTRUCTION—*continued.*

*enceinte*, and she subsequently gave birth to a daughter, G. B.'s only child. After G. B.'s death it became known that T. C. was still living. J. C. died in 1884. A claim was then made by G. B.'s nephews and nieces to have the estate divided amongst them, on the ground that, as G. B.'s daughter was illegitimate, the gift over in default of issue took effect.

*Held*, by Kay, J., that the rule applied that the word "children" meant legitimate children just as though "legitimate" were written before it, unless there was a clear indication to the contrary in the will; that here there was no such indication as to enable the Court to construe "children" to include an after-born illegitimate child of the testator, and that, therefore the gift over took effect. *Re BOLTON. BROWN v. BOLTON* 53 L. T. 25, W. N. (1885) 123

8. — "*Children*" — *Grandchildren* — *Issue.* In construing a will, the rule is to take the word "children" in its literal sense, unless the meaning is clearly wider, or, on the other hand, nil; and for this purpose it is not right to take into consideration outside circumstances.

K. left residue to trustees upon trust to divide it into four parts, and pay one part "to the children of my late brother W. equally," another part "to the children of my late brother J. equally," a third part "to the daughters of my late brother A. equally," and the other part to a certain nephew. J. had three children only, all of whom were dead at the date of the will, as the testator knew. J. left, however, both grandchildren and great-grandchildren who survived the testator. *Held*, by Pearson, J., that there was an intestacy as to the share given to J.'s "children," there being nothing in the will itself to justify the meaning of the word being extended.

*Semble*, even if outside circumstances could be looked at, the grandchildren would have no better claim than great-grandchildren or any remoter issue of J. *Re KIRK. NICHOLSON v. KIRK*

[52 L. T. 346, W. N. (1885) 7]

9. — "*Children*" — *Issue by two Marriages* — *Mother described by surname of first Husband* — *Ambiguity—Extrinsic Evidence.* A testator, in 1877, left to his trustees a sum of £10,000 railway stock, in trust for the "children" living at his decease, of his deceased niece "Margaret Kerr." Some years before the date of the will the niece mentioned had married a second time, under circumstances which very much displeased the testator, who had in consequence declined to hold any communication with her, and always refused to recognise her by any other surname than that of "Kerr," her first husband's. There were five children of the first marriage, and one of the second, who all survived the testator. Within three weeks after the date of the will the testator wrote a letter to one of the five children of the first marriage, from which it appeared that he intended to confine the gift of the £10,000 to them as he stated therein that he had by his will left them £2000 each. He also caused a similar letter to be written and sent about four years later. The testator died in 1883:—

*Held*, by Porter, M.R., and by the Court of Appeal, that the word "children" must bear its *primâ facie* meaning, so as to include the children

**VI. WILL—CONSTRUCTION—continued.**

of both marriages; and that, there being no latent ambiguity as to its signification in this instance, the letters were not admissible to shew the testator's intention. **ANDREWS v. ANDREWS** 15 L. R. Ir. 199 (G.A.)

10. — *Class—Life Estate determinable on Bankruptcy—Gift over to Children—Time for ascertaining Class—Canons of Construction.* A testator gave a fund to trustees upon trust to pay the income to his son during his life, and after his death to pay and divide the fund equally among all the children which the son might have, as and when they should respectively attain twenty-one, and if the son should leave no child who shall attain twenty-one, the fund was to sink into the residue of the testator's estate. There was a proviso that if the son should be adjudicated bankrupt the fund and the income thereof should thenceforth immediately go and be payable or applicable to or for the benefit of the child or children of the son "in the same manner as if he was naturally dead" or in default of such child or children should sink into the residue. After the death of the testator the son was adjudicated a bankrupt; at the date of the adjudication he had two children; other children were born to him afterwards:—

*Held*, affirming the decision of Pearson, J. (25 Ch. D. 458, 53 L. J. Ch. 308, 50 L. T. 120, 32 W. R. 410, 1884 Dig. col. 537), that the children born after the adjudication were entitled to share in the fund subject to the contingency of their attaining twenty-one.

Observations upon the force of canons of construction. *Re BEDSON'S TRUSTS* 28 Ch. D. 523, [54 L. J. Ch. 644, 52 L. T. 554, 33 W. R. 386 (G.A.)]

11. — *Executory Trust—Absolute Gift—Codicil—Plate—"To A. and his successors"—Leasehold House—"To A. and his successors to be enjoyed with and to go with the title"—Paintings—Statuary and China—"To A. and his successors, to be held and settled as heirlooms and to go with the title"—Settlement—Contents of House—Jewellery at Bankers—Legacies—Pecuniary—Specific—"All Legacies to be paid free of legacy duty"—Legacy Duty.* A testatrix by a codicil to her will bequeathed to A. C., sixth Earl of E., and to his successors, all her plate, and also gave, devised, and bequeathed a leasehold house to him and "to his successors and to be enjoyed with and to go with the title," and as to all her household furniture, paintings, books, china, and the whole contents of her house, she bequeathed the same to her trustees and executors upon trust that they should in the first place select and set aside a collection of the best paintings, statuary, and china for the said Earl of E., and his "successors to be held and settled as heirlooms, and to go with the title," and she authorized them to give to the said Earl or his successors any article of furniture which they should think fit, and as to all the rest and residue of the contents of her house upon trust for her trustees to select presents for her friends, and directed them to present any portion of the residue of the contents of her house to her cousins if they should think fit, or to sell the same, and the moneys so received to form part of her residuary personal estate, and she directed all the legacies left by her will and codicil to be paid free of legacy duty.

**VI. WILL—CONSTRUCTION—continued.**

The testatrix died possessed of considerable personal estate, which comprised amongst other things a number of articles of jewellery which were at her death in a box at her bankers, which jewellery had been bequeathed to her. It was proved that it had been the practice of the testatrix and also of the former owner to send such box for safe custody to the bankers when they respectively were away from London.

*Held*, by Chitty, J., first, that the plate and leasehold house passed to the sixth Earl absolutely: the words "to be enjoyed with and to go with the title" not being sufficient in themselves to create an executory trust or to cut down the interest to a life estate. *Montagu v. Lord Inchiquin* (23 W. R. 592) discussed.

Secondly, that the gift to the trustees of the whole contents of the house upon trust to "select and set aside a collection of the best paintings, statuary, and china, for the said Earl of E. and his successors, to be held and settled as heirlooms and to go with the title" was a clear direction to settle and created an executory trust, and a settlement was directed (to be settled in Chambers) giving a life interest to the sixth Earl with remainder to the next heir to the Earldom for his life.

Thirdly, that the box of jewellery passed to the trustees as part of the contents of the house, that being the locality to which the property ought to be ascribed, although jewellery is merely for personal use and is not appropriate to a house.

Lastly, that under the words "all the legacies left by my will and codicil to be paid free of legacy duty," the legacy duty was to be paid out of the estate on all legacies, as well pecuniary as specific, the word "paid" not being sufficient under the circumstances to cut down the direction to pecuniary legacies only.

*Ansley v. Cotton* (16 L. J. (Ch.) 55) discussed and followed. *Re JOHNSTON (or JOHNSON)*. *COCKRELL v. EARL OF ESSEX* - 26 Ch. D. 538, [53 L. J. Ch. 645, 52 L. T. 44, 32 W. R. 634]

12. — *"First and Second Cousins"—Bequest to—Gift over—Death before payment of any Legacy.* Testator bequeathed the residue of the proceeds of sale of his real and personal estates upon trust, after the deaths of his wife and sister to be equally divided amongst all such of his first and second cousins, including his reputed cousin A. B. and his children, or reputed children, and the children of his reputed cousin S. G. deceased, as should be then living, and if A. B. should be then dead, the share to which he would have been entitled, if then living, should be divided amongst his then surviving children. And by a codicil, the testator gave a legacy out of the same proceeds of sale "to each of my cousins J. B. and T. C." in addition to any sum to which they might be entitled under his will, and directed that if any or either of his first or second cousins should die before the payment of any sum or share thereby or by his will directed to be paid to him or her, such sum or share should be equally divided among his or her wife or husband and children or child, if any, and if none should be paid to his or her next of kin. The testator had not, either at the date of his will or at his death, any second cousin, but at the time of his death he had both first cousins and first

**VI. WILL—CONSTRUCTION—continued.**

cousins once removed, and also first cousins twice removed. A. B. and S. G., if they had been legitimate, would have been the testator's first cousins, and J. B. and G. C., were his first cousins once removed:—

*Held*, by Kay, J., that first cousins once removed and their children were included in the gift:

*Held*, also, that the gift over on death before payment was to be construed as before becoming entitled to payment. *WILKES v. BANNISTER*

[30 Ch. D. 512, 54 L. J. Ch. 1139, 53 L. T. 247, 33 W. R. 923]

13. — “*Furniture, Goods, and Chattels*”—*Ejusdem generis*—Gift of “all my interest in C. Estate”—Purchase-money—Mixing with Money at Bankers—Deposit—Ademption.] A testator, after bequeathing pecuniary legacies, directed them “to be paid from such part of my personal estate as shall consist of money at my bankers or in the 3 per cent. consols.” And after directing that the whole of his income should be devoted to the comfort and maintenance of his wife, and that she should have the use of his residence, he desired “that the furniture, goods, and chattels be not sold during my wife's lifetime, but at her decease be divided among the executors. And after the death of his wife he bequeathed to M. “all my interest in the C. estate.”

Prior to the date of the will, the C. estate, which had been appointed by will by the testator's wife to him absolutely, was taken by the Metropolitan Board of Works, the purchase-money being paid into Court. Subsequently, the wife died and administration with her will annexed was taken out by the testator, who then conveyed the C. estate to the Board, and obtained payment out to himself of the purchase-money, which he placed with his bankers partly on deposit and partly to his general account with his other moneys, from time to time drawing on that general account. At his death there stood to his credit at his bankers the sum on deposit and a balance on his general account:—

*Held*, by Bacon, V.C., (1), applying the rule *ejusdem generis*, that the gift of “furniture, goods, and chattels,” passed only such furniture, &c., as, on the house being let furnished, would go with the occupation of the house, and not such articles as jewellery, guns, pistols, tricycles, and scientific instruments: (2), that the gift of “all my interest in the C. estate,” had been adeemed and did not pass the money on deposit or any part of the balance at the bankers.

*Clark v. Browne* (2 Sm. & Giff. 524) not followed.

*Moore v. Moore* (29 Beav. 496) distinguished. *MANTON v. TABOIS* 30 Ch. D. 92, 54 L. J. Ch. 1008, 53 L. T. 289, 33 W. R. 832

14. — “*Heirs*”—Gift of Real and Personal Estate together—Substitution.] A testator gave, devised, and bequeathed to his wife all his property, real or personal, on trust for herself for her life, and after her death the whole of his property was to be equally divided among all his children, “or such of them as may be then surviving, or their heirs.” The testator had five children, all of whom survived him. Of these children two daughters died before the wife, leaving children:—*Held*, by

**VI. WILL—CONSTRUCTION—continued.**

Pearson, J., that the word “heirs” had a twofold meaning, viz., heir-at-law as regarded the real estate, and next-of-kin as regarded the personality:—*Held* also, that the property was divisible in fifths—each surviving child of the testator taking one-fifth, and the heir-at-law and next-of-kin of each deceased daughter taking between them (according to the nature of the estate) one-fifth share. *Wingfield v. Wingfield* (9 Ch. D. 658, 47 L. J. Ch. 768, 39 L. T. 227, 26 W. R. 711) followed.

*Smith v. Butcher* (10 Ch. D. 113, 48 L. J. Ch. 136, 27 W. R. 281) distinguished. *KEAY v. BOULTON* 25 Ch. D. 212, 54 L. J. Ch. 48, 49 L. T. 631, 32 W. R. 591

15. — “*Heirs*”—Absolute Gift of Personality—Word of Limitation.] A testator, by his will, made the following bequest: “After the death of my wife, I give unto my sister M. the wife of J., the sum of £1000 sterling, the same to become the property, at her death, of her heirs. J. survived M. (who died without issue), and by his will bequeathed the £1000 given to M. to X. and Z. On the subsequent death of the testator's widow:—*Held*, reversing the decision of Kay, J. (53 L. J. Ch. 400), 50 L. T. 253, W. N. (1884) 52, 1884 Dig. col. 534, that the £1000 bequeathed to M. belonged to F., her heiress, and next-of-kin, and not to X. and Z. *Re RUSSELL*. 52 L. T. 559, W. N. (1885) 21 (C.A.)

16. — “*Heirs*”—Devise and Bequest of Real Estate and Personal Estate as a Mixed Fund—Ultimate Gift to “the heirs of” A. *Re JONES*. *STARKS v. SALTER* - W. N. (1885) 152

17. — “*Heirs*”—Bequest of Personality—Whether testator's widow included in word “heirs”—Observations on English Cases *TILLMAN v. DAVIS* [47 Amer. R. 1 (U.S.)]

See also *WILKINS v. ORDWAY*, *ib.* 215.

18. — Investment—State of—Shares in Bank—Altered Conditions—Companies Act, 1879 (42 & 43 Vict. c. 76), s. 5.] A testator bequeathed to trustees fully paid-up shares in a banking company, with power to retain the investment, and after his death the shares were altered in amount and became liable to calls.

*Held*, by Pearson, J., that, by reason of the changes which had taken place, the shares were no longer in the same state of investment as at the testator's death, but were in a state of investment unauthorized by the will, and that the trustees must convert them. *Re MORRIS*. *BUCKNILL v. MORRIS* 54 L. J. Ch. 388, 52 L. T. 462, 33 W. R. 445, [W. N. (1885) 31]

19. — “*Issue*”—Grandchildren not entitled under gift to “issue.” *Re Judd's Trusts* [W. N. (1884) 206]

20. — Joint Tenancy—Bequest on Trust for Benefit of Widow and Two Children—Direction to Trustees as to disposal—Gift on Widow's death to Two Children and the Survivor—Death of surviving Child in Widow's lifetime—Application of Income—Title to Corpus. *Re HARGREAVES*. *MUSSON v. HARGREAVES* - W. N. (1885) 174

21. — Lapse—Provision against—Gift to “Executors or Administrators.” A testator gave certain personal property to his executors to be held by him upon trust for the equal benefit of the

**VI. WILL—CONSTRUCTION—continued.**

testator's brother and sister; and in case of the death of either or both of them in his lifetime, he desired that the bequests should not lapse, but should go to and become the property of their respective executors or administrators. The brother died in the testator's lifetime:—*Held*, affirming the decision of Chitty, J. (32 W. R. 516, W. N. (1884), 53, 1884 Dig., col. 545), that the gift was a gift to the executors or administrators of the deceased legatee, to be held by them as part of his estate. *Palin v. Hills* (1 My. & K. 470) overruled. *Long v. Watkinson* (17 Beav. 471, 19 L. T. (O. S.) 309) followed. *Re CLAY. CLAY v. CLAY* 54 L. J. Ch. 648, [52 L. T. 641, W. N. (1885) 23 (C.A.)]

**22. — Lapse—Gift of Income—Ultimate Gift at twenty-one—Vested or Contingent interest.]** M. by her will gave her residuary realty and personally to a trustee upon trust to convert and invest, and to “apply the income arising therefrom towards the maintenance and education of her two children” (naming them) “until they shall respectively attain the age of twenty-one years, and then to divide the trust funds equally between them as tenants in common.”

M. left only two children, both illegitimate; one died a minor and unmarried, and if his share vested it went to the Crown:—

*Held*, by Bacon, V.C., that the gifts were separate, and the ultimate gift was contingent, and did not vest, but lapsed on the death of the child under twenty-one.

*Re Bunn, Isaacson v. Webster* (16 Ch. D. 47, 29 W. R. 348) distinguished. *Re MORRIS. SALTER v. ATTORNEY-GENERAL* 52 L. T. 840, 33 W. R. 895, [W. N. (1885) 89]

**23. — Lapse—Void Life Estate—Acceleration of Remainder.]** Under C.'s will his widow (since dead), took a life estate, and at her death the property was to be divided equally among such of his children as should be then living, but if any of the said children should die before the widow leaving children, then the share of their parents was to be divided equally amongst such children. One of C.'s daughters being the wife of an attesting witness, the gift to her failed:—

*Held*, by Bacon, V.C., that she took nothing, but that her children took her share as tenants in common. *Re CLARK. CLARK v. RANDALL*

[31 Ch. D. 72, 55 L. J. Ch. 89, 53 L. T. 91, [34 W. R. 70]

**24. — Lapse—Settlement of Shares.]** A testator bequeathed the residue of his estate to trustees upon trust for a nephew and three nieces equally between them, and in case any or either of them should die under twenty-one then he directed that the share or shares of him, her, or them so dying, whether original or accruing, should go to the others or other of them, and if more than one in equal shares: “Provided and I declare that my trustees or trustee shall retain the share of each of my nieces of and in the said trust moneys upon the trusts following.” Then followed trusts for the niece for life for her separate use, and after her decease as to the capital upon trust as she should by will appoint, and in default of appointment upon trust for her children who being sons should attain twenty-one, or being daughters attain that age or marry, and in default of such issue upon trust for

**VI. WILL—CONSTRUCTION—continued.**

such persons as should be next of kin to her at her decease. One of the nieces married and died before the testator, leaving a child who survived him:—

*Held*, affirming the decision of Pearson, J. (27 Ch. D. 346, 53 L. J. Ch. 1023, 51 L. T. 654, 32 W. R. 986, 1884 Dig., col. 544), that the share of the deceased niece had lapsed, and that there was an intestacy as to it. *Re ROBERTS. TABLETON v. BRUTON* - 30 Ch. D. 234, 53 L. T. 432 (C.A.)

**25. — Mistake—Clerical Error in Description—Correction by Reference to Context—Manifest Absurdity or Incongruity.]** A clerical error may be corrected where, if uncorrected, it makes the will absurd, and the proper correction can be gathered from the context.

A testator devised an estate called Lea Knowl to trustees upon trusts for the benefit of his daughter W., her husband and children, and empowered his trustees, at the request of his daughter W., to sell the estate and stand possessed of the sale moneys upon the trusts thereinbefore declared “concerning the said Lea Knowl estate hereby devised, as to such and so many of them as shall at the time of sale have been existing undetermined and capable of taking effect.” He then devised an estate called Croxton to trustees upon similar trusts for the benefit of his daughter C., her husband and children, and empowered his trustees, at the request of his daughter C., to sell the last-mentioned devised hereditaments and stand possessed of the sale moneys, “in trust for such person and persons, and for such estates, ends, intents and purposes, powers, provisoes, and conditions as are hereinbefore limited, expressed, and declared, of and concerning the said Lea Knowl estate hereby devised, as to such and so many of them as shall at the time of sale have been existing undetermined and capable of taking effect”:—

*Held*, by Chitty, J., that the words “the said Lea Knowl estate,” in the trusts of the moneys to arise from the sale of the Croxton estate had been inserted in the will through an obvious error; that to read the words “the said Lea Knowl estate,” literally and grammatically, would be making the will lead to a manifest absurdity or incongruity, and that the will must be read as if the words “the said Croxton estate,” were inserted in the place of the words “the said Lea Knowl estate,” in the trusts of the moneys to arise from the sale of the Croxton estate. *Re NORTON'S ESTATE. SALT v. PYM* 28 Ch. D. 153, 54 L. J. Ch. 273, 52 L. T. [173, 33 W. R. 836]

**26. — Mistake—Misdescription of legatee—Trust for “Freedmen's Association”—No organization bearing that name—Parol evidence. FAIRFIELD v. LAWSON** - 47 Amer. R. 669 (U.S.)

**27. — “Money”—“Charitable and deserving objects.”]** A testatrix by her will desired “that the whole of the money over which I have a disposing power be given in charitable and deserving objects, the amount being six hundred pounds sterling”:—

*Held*, that this was a good charitable gift.

*Williams v. Kershaw* (5 Cl. & F. 111, n.) distinguished.

At the date of the will in August, 1831, the testatrix had over £600 at her bankers. In February, 1833, she invested £600 in the purchase of

**VI. WILL—CONSTRUCTION—continued.**

£586 Consols. At the date of her death in May, 1884, she had the £586 Consols, £555 at her bankers, and £8 cash in her house:—

*Held*, by Pearson, J., that the word "money" in the will ought not to be extended beyond its strict meaning. *Re STUTON. STONE v. ATTORNEY-GENERAL* - 23 Ch. D. 484, 54 L. J. Ch. 613, [33 W. R. 519]

23. — "Money."] A testator, after directing his executors to pay a sum of money covenanted to be paid by his marriage settlement, and giving a freehold house to his wife and certain pecuniary legacies, proceeded:—"The remainder of my money, after payment of my just debts and testamentary and other expenses, I give to my wife. I also give to my wife all the furniture at W. (except the piano and hall clock)."

*Held*, by Pearson, J., that the words "remainder of my money" passed all stock and investment of money, but not the general residue other than such investments. *Lynn v. Kerridge* (West's Rep. temp. Hardwicke, 172) followed. *Re HART. HART v. HERNANDEZ* - 52 L. T. 217, W. N. (1885) 18

29. — *Mortgages on Real and Leasehold Security—Turnpike Road Bonds.*] Specific bequest of all moneys, stocks, funds, shares, and other securities, "except mortgages on real and leasehold security":—

*Held*, that mortgages of turnpike road tolls and mortgages of turnpike road tolls and toll-houses were not mortgages on real security, and did not come within the exception in the bequest.

Decision of North, J. (24 Ch. D. 685, 53 L. J. Ch. 191, 49 L. T. 626, 1884 Dig. col. 545), reversed. *CAVENDISH v. CAVENDISH* 30 Ch. D. 227 (C.A.)

30. — "Next of Kin," Gift to—Exclusion of named Persons.] T. by his will gave his personalty to be held by trustees, in the events which happened, "in trust for such person or persons as under the statutes for the distribution of the estates of intestates shall, exclusive of my daughter L., and of my grandchild G. and her issue (if any) then be my next of kin; such persons, if more than one, to take in equal shares as tenants in common.

When the events happened, there were living L. and G., and a sister of T., and two nephews, sons of his deceased brother.

*Held*, reversing the decision of Kay, J. (52 L. T. 210, W. N. (1885) 6), that the effect of the will was to exclude L. and G., and that the sister and nephews took in equal shares *per capita*. *White v. Springett* (L. R. 4 Ch. 300, 20 L. T. 502) followed. *Re TAYLOR. TAYLOR v. LEY* 52 L. T. 839, [W. N. (1885) 158 (C.A.)]

31. — *Option to purchase—Interest not transmissible to Executors of Person to whom Option is given.*] A testator devised and bequeathed certain real and personal property, including an hotel, to trustees upon trust to pay out of the rents, issues, and income thereof, annuities to his widow and sister, and during their lives and the life of the survivor to divide the residue of the rents, issues, and income equally between his four children; and after the decease of the survivor of his wife and sister he declared that his son should have the option of purchasing the hotel at the price of £10,000, such sum to fall into testator's residuary personal estate; but if the son should decline to

**VI. WILL—CONSTRUCTION—continued.**

purchase the hotel at that price within six months after the decease of the survivor of the testator's wife and sister, he directed that his trustees should sell the hotel, and that the moneys arising from the sale thereof should fall into his residuary personal estate. The son died very soon after his father, the testator, also leaving a will whereby he appointed executors. The testator's wife and sister being also dead:—

*Held*, that the option to purchase the hotel was a right personal to the son, and could not be exercised after his death by his executors. *Re COUSINS. ALEXANDER v. CROSS*

[30 Ch. D. 203 (C.A.)]

32. — "Ordinary Outgoings"—Tenant for Life—Apportionment—Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 73—Metropolis Local Management Act, 1862 (25 & 26 Vict. c. 102), ss. 96, 97.] A testator gave freehold and leasehold houses, bonds, and consols on trust to pay the income after deducting ordinary outgoings to his widow for life:—

*Held*, by Pearson, J., that the tenant for life must bear the cost of drainage work required to be done to one of the leasehold houses by the vestry under the Metropolis Management Act, 1855, s. 73. *Re CRAWLEY. ACTON v. CRAWLEY*. 23 Ch. D. 431, [54 L. J. Ch. 652, 52 L. T. 490, 33 W. R. 611, [49 J. P. 598]

33. — *Policy of Life Assurance—Gift of sum of money secured by—Right to Bonus.* *Re EDMED. PETTITT v. DUNN* W. N. (1885) 152

34. — *Precatory Trust.*] A testator gave all his real and personal estate unto and to the absolute use of his wife, her heirs, executors, administrators, and assigns, "in full confidence that she would do what was right as to the disposal thereof between his children, either in her lifetime or by will after her decease."

*Held*, affirming the decision of Pearson, J. (24 Ch. D. 199, 52 L. J. Ch. 758, 48 L. T. 958, 32 W. R. 120, 1883 Dig. col. 450), that under these words the widow took an absolute interest in the property, unfettered by any trust in favour of the children. *Re ADAMS AND THE KENSINGTON VESTRY* 27 Ch. D. 394, 54 L. J. Ch. 87, 51 L. T. 382, [32 W. R. 883 (C.A.)]

35. — *Precatory trust—Gift to A., "having full confidence in her, and I hereby request that at her death she will divide equally between my sons" the property so given.* *KNOX v. KNOX*

[48 Amer. R. 487 (U.S.)]

36. — "Real estates wheresoever situate"—Personal Estate—Leaseholds for Years—Wills Act (1 Vict. c. 26), s. 26.] A testator by his will, dated in 1870, declared that his trustees should stand possessed of and interested in the annual income and proceeds of his real and personal estate in trust to pay an annuity to his wife, and after her decease he declared and directed that his trustees should stand possessed of and interested in his real and personal estate upon the trusts and for the intents and purposes following, that is to say, "as to my real estates wheresoever situate (the Victoria Park Cemetery in the parish of St. Matthew, Bethnal Green, excepted)" in trust to pay the annual rents and proceeds thereof to two children

**VI. WILL—CONSTRUCTION—continued.**

as therein mentioned, "and as to my freehold estate called the Victoria Park Cemetery, and my personal estate wheresoever situated, upon trust to pay the dividends, interest, and annual proceeds thereof," to his five daughters in equal proportions.

The personal estate comprised certain leaseholds for years:—

*Held*, by Chitty, J., that according to the true construction of the 26th section of the Wills Act (1 Vict. c. 26) the leaseholds for years did not pass under the gift of the real estates.

*Wilson v. Eden* (11 Beav. 237, 5 Ex. 752, 14 Beav. 317, 18 Q. B. 474, 16 Beav. 153) discussed. *Turner v. Turner* (21 L. J. Ch. 843) and *Gully v. Davis* (L. R. 10 Eq. 562) discussed and distinguished. *BUTLER v. BUTLER* - 28 Ch. D. 66, [54 L. J. Ch. 197, 52 L. T. 90, 33 W. R. 192]

37. — *Satisfaction—Covenant to pay Annuity—Legacy of Lump Sum—Presumption against double Portions.* *MONTAGU v. EARL OF SANDWICH* - - - - - W. N. (1885) 86

38. — *"Securities for money"—Consols—Dividends—Promissory Notes—Railway Debenture Stocks.* B. by his will bequeathed all his "moneys due on mortgage, securities for money, and ready money," to trustees upon trust for his children. Part of his property consisted of (1) consols, (2) proportion of dividend on such consols to the date of his death, (3) promissory notes, and (4) railway debenture stocks:—

*Held*, by Kay, J., that the consols and promissory notes were "securities for money" within the meaning of the gift, and so also the railway debenture stocks, it being expressly provided by s. 23 of the Companies Clauses Act, 1863, that debenture stock and interest thereon should be a charge upon the undertaking of the company.

But *held*, that the proportion of dividend on the consols did not pass, as the Apportionment Act, 1870, applied, and the dividend must therefore be apportioned as at the date of B.'s death. *Re BEAVAN. BEAVAN v. BEAVAN* 53 L. T. 245

39. — *"Severally."* Under a bequest to four sons (naming them) of "the sum of £1000 on their severally attaining the age of twenty-five years":—*Held*, by Bacon, V.-C., that each of the sons took £1000 on attaining twenty-five. *Re CHILCOTT. CHILCOTT v. CHILCOTT* W. N. (1885) 90

40. — *"Shares" in Public Company, gift of—Debentures in same Company held not to pass.* A testator bequeathed all his stock, shares, and debentures in the M. bank, shares in four other companies, including the A. Gas Co., and all other shares in banks or public companies not otherwise disposed of. At the time of his death the testator possessed 135 shares in the A. Gas Co., and also £2000 debentures in that company:—

*Held*, that the debentures did not pass under the bequest. *DILLON v. ARKINS* 13 L. R. Ir. 557

41. — *Speaking from death—Specific Devise of "my cottage and all my land at S." "in their present state."—Residuary Devise—Subsequent Contract to purchase House and Land at S.—Wills Act, 1837 (1 Vict. c. 26), s. 24.* A. devises to G. for life, "my cottage and all my land at S.," subject to the stipulation (among others) that the plantations, heather, and furze be all preserved "in their present state," and devises "all other my

**VI. WILL—CONSTRUCTION—continued.**

freehold manor, messuages, lands, and real estate whatsoever and wheresoever," to trustees upon trust for sale. At the date of his will A. had a small cottage with twenty-two acres of rough land held with it, and he subsequently contracted to purchase from G. a house of considerable size, with gardens and land comprising ten acres closely adjoining the cottage and land. The contract was not completed at his death:—

*Held*, that a contrary intention within the meaning of the 24th section of the Wills Act was not shewn with sufficient clearness, but that, construing the will as if it had been made on the day of the testator's death, having regard to the circumstances at that date and to the residuary devise, the specific devise more aptly referred to the cottage and rough land, and did not carry the after-acquired property.

The words "all my land at S." would, if used alone, have been sufficient to carry the after-acquired land, with the house standing upon it; but upon the authority of *Ever v. Hayden* (Cro. Eliz. 476, 658), by force of the context the word "land" must be taken as confined to lands in contradistinction from buildings.

Decision of Kay, J. (27 Ch. D. 600, 53 L. J. Ch. 1163, 51 L. T. 392, 33 W. R. 71, 1884 Dig., col. 548), reversed.

*Semble, Per Lindley, L.J.*:—Sect. 24 of the Wills Act, which provides that a will shall speak as to the real and personal estate comprised in it (*i.e.*, the will) from the day of the testator's death, leaves open the question whether a particular property passes by the specific or the residuary devise. *Re PORTAL & LAMB* 30 Ch. D. 50, 54 L. J. Ch. 1013, [33 W. R. 859 (C.A.)]

42. — *Specific Legacies—Abatement.* The testator, who survived her husband, had a power of appointment by will over settled property in case she died in her husband's lifetime. Part of such property consisted of consols. She also had a sum of consols belonging to herself as separate property. By her will she gave her own property, and purported to appoint the settled property to trustees. She directed her trustees to "transfer" certain sums of consols to individual legatees, and to stand possessed of certain other sums of consols for individuals for life, with remainders over. The will contained a residuary gift. The amount of the consols purported to be dealt with by the will was more than that of either the settled consols or the consols the separate property of the testatrix, but was not as large as the amount of the two together:—

*Held*, by Pearson, J., that the legacies were specific, and were intended to be paid proportionately out of the two funds, and were to be paid out of the consols the separate property of the testatrix, abating proportionately, the residuary gift being taken into account. *Re YOUNG. TRYE v. SULLIVAN* (No. 2) - 52 L. T. 754, W. N. (1885) 36

43. — *"Stock standing in my name"—Residuary gift.* *Held*, by Bacon, V.C., that a bequest of "all the stock standing in my name in various companies, together with all bonds, &c.," included sums in consols, and in new 3 per cent. annuities, a thirty years' annuity, also sums of New Zealand £4 per cent stock, of Victoria 1883 £4 per cent. stock, of New South Wales £4 per cent. stock,

**VI. WILL—CONSTRUCTION—continued.**

of Metropolitan Board of Works stock, and of Nottingham Corporation stock.

*Held*, also, that £750 cash and a book debt of £220 passed under a residuary gift of "all my household furniture, wines, carriages, horses, and other effects except my jewellery." *Re PARROTT. PARROTT v. PARROTT* 53 L. T. 12, W. N. (1885) 127

44. — "Surviving."] A testator devised to each of his children an estate for the life of that child, with remainder to the children of that child, and in case any or either of the testator's children should die without leaving any child or children him, her, or them surviving, then the testator devised the estates to which their child or children respectively would have been entitled under his will, if living, to his, the testator's, surviving children for their respective natural lives, and after their deceases respectively he gave their respective shares to their respective children, their heirs, executors, administrators, and assigns. There was no gift over on the death of all the testator's children without leaving children. C., one of the testator's children, died without leaving issue. Some of the other children were then living; others had died leaving children of theirs then living:—

*Held*, that the word "surviving" was to be read in its proper sense, and that the children of those children of the testator who had predeceased C., took no interest in the estate of which C. was tenant for life.

The fact that the original shares are all settled by the will, and that the shares which the "survivors" take in the share of a child who dies without issue, are settled in the same way as their original shares, is not by itself sufficient to shew that "survivors" is used otherwise than in its proper sense. *Re BENN. BENN v. BENN* [29 Ch. D. 839, 53 L. T. 240, 34 W. R. 6 (C.A.)]

45. — "Surviving." *MINTON v. MINTON* W. N. (1885) 164

46. — *Survivor—Gift for Life.*] S. by his will gave to his wife all his real and personal estate, during her life, and at her decease he gave the same to M. and W., if they were both living at the time of her decease, and in case of the death of either of them before his wife, he gave the whole unto the survivor of them. M. and W. both died before the wife of S. *Held*, affirming the decision of Pearson, J. (53 L. J. Ch. 541, 50 L. T. 204, 32 W. R. 410, W. N. (1884) 15, 1884 Dig. col. 549) that neither M. nor W. had acquired a vested interest, for the word "survivor" referred to a survivorship of the wife of S., and that upon her death there was an intestacy as to the property given by the will. *White v. Baker* (2 D. G. F. & J. 55, 29 L. J. Ch. 577, 2 L. T. (N.S.) 583, 8 W. R. 553) distinguished. *Per Brett, M.R.*; the rule against construing a will so as to cause an intestacy, is only a rule which the Court is obliged to bring in as a last resource. *Re HILL to CHAPMAN*

[54 L. J. Ch. 585, 52 L. T. 290, 33 W. R. 570 (C.A.)]

47. — "Survivors"—*Period of Survivorship.*] M. bequeathed legacies to his three sisters and his brother by name for their respective lives, and continued, "the interest on all these legacies is to be paid regularly to the respective parties as it becomes due; and in the event of either of the

**VI. WILL—CONSTRUCTION—continued.**

parties dying and without child or children, then the legacy of the deceased is to be at once divided amongst the survivors." The will contained a residuary gift. The last survivor of the sisters and brother having died without children:—

*Held*, by Kay, J., that his legacy fell into the residue.

*Nevill v. Boddam* (28 Beav. 554, 29 L. J. Ch. 738, 2 L. T. 273, 8 W. R. 490), and *Re Corbett's Trusts* (Johns, 591, 29 L. J. Ch. 458, 2 L. T. 147, 8 W. R. 257) followed.

*Maden v. Taylor* (42 L. J. Ch. 569) and *Davidson v. Kimpton* (18 Ch. D. 213, 45 L. T. 132, 29 W. R. 912) considered. *Re MORTIMER. GRIFFITHS v. MORTIMER* — 54 L. J. Ch. 414,

[52 L. T. 383, 33 W. R. 441, W. N. (1885) 30]

48. — "Unmarried."] Although the word "unmarried" is one of flexible meaning, and may mean either "never having been married," or "not having a husband" at the time when a gift is to take effect, the former is the primary or natural meaning, and, in the absence of any context shewing a different intention, the word will be so construed. *Re SERGEANT. MERTENS v. WALLEY.* [26 Ch. D. 575, 54 L. J. Ch. 159, 32 W. R. 987]

49. — *Vesting—Gift at twenty-one or Marriage, and, if only one Child, to him—Death of only Child, an Infant, and unmarried.*] F. by his will bequeathed £4000 to trustees upon trust to pay the income to his daughter A. for life, and at her death to pay and divide the same between A.'s children in equal shares, who, being sons, should attain twenty-one, or, being daughters, attain that age or be married, and if only one child, then wholly to him or her; if no child who should live to attain a vested interest, then over. A. had one child, who died an infant, unmarried.

*Held*, by North, J., that A.'s child did not take a vested interest in the £4000. *DORÉ v. FLETCHER* [34 W. R. 29, W. N. (1885) 185]

50. — *Vesting—Vested or Contingent Gift—Income until Marriage—Corpus at the Time of Marriage.*] A testatrix by her will, after specific bequests of bonds, gave all the rest of her stocks and shares upon trust to pay the income to G. until his marriage, and at the time of his marriage to hand over the stocks and shares to him:—

*Held*, by Kay, J., that G. took a vested interest under the gift, and, being of age, was entitled to have the stocks and shares comprised therein transferred to him, although he had not married.

*Batsford v. Kebbell* (3 Ves. 363) distinguished.

*In re Bunn* (16 Ch. D. 47), and *Vize v. Stoney* (2 D. & Wal. 659, 1 D. & War. 337) observed upon. *Re WREY. STUART v. WREY*

[30 Ch. D. 507, 54 L. J. Ch. 1098, 53 L. T. 334]

See also WILL—ABSOLUTE GIFT.

WILL—ADEMPTION.

WILL—ANNUITY.

WILL—CHARGE OF DEBTS (AND LEGACIES).

WILL—CONDITION.

WILL—ESTATE IN REALTY.

WILL—EXECUTORS.

WILL—PERPETUITY.

WILL—RESIDUE.

— Accumulations.

See ACCUMULATIONS.



**VI. WILL—CONSTRUCTION—continued.**

- Bequest to husband and wife and third person  
— Separate use.  
See HUSBAND AND WIFE — MARRIED  
WOMEN'S PROPERTY ACTS. 12.
- Domicil of testator.  
See DOMICIL. 1.
- Leaseholds, devise of, for life, remainder over  
— Renewal.  
See LANDLORD AND TENANT—LEASE. 8.
- Lower Canada—Testator domiciled in.  
See COLONIAL LAW. 6.
- Solicitor—Executor—Direction as to profes-  
sional charges.  
See TRUSTEE—COSTS AND CHARGES. 4.
- Stock belonging to testator's wife standing in  
joint names of husband and wife.  
See ELECTION. 4.

**VII. WILL—ESTATE IN REALTY—Devise—**  
**"Estate"—"Child or Children"—Dying without**  
**Issue—Rule in Shelley's Case** (1 Rep. 93 b.) By  
 a will made in 1820 the testatrix said "I give and  
 devise unto my eldest son Thomas all my real and  
 freehold estate and all leases and leasehold premises  
 now in my possession (subject to the payment of  
 the rents and the performance of the covenants  
 mentioned in the said indentures of leases) during  
 the term of his natural life, and after his decease to  
 his legitimate child or children (if there be any);  
 but if he dies without issue my will is it may go  
 unto my other son William during the term of his  
 natural life, and afterwards to his legitimate child  
 or children (if any); but if he should likewise die  
 without issue my will is it may go to my daughter  
 Mary and to her heirs and assigns for ever."

The will then gave legacies to the second son  
 and the daughters, with provisions for the daughters,  
 to be paid in the first instance by Thomas, but to  
 be repaid in part or in whole to him in certain  
 events by his successor in the estate. Thomas died  
 without issue:—

*Held*, by Earl Cairns and Lords Blackburn and  
 FitzGerald, affirming the decision of the Court of  
 Appeal, that reading the whole will together  
 Thomas took an estate tail in the realty.

*Contrà*, by the Earl of Selborne, L.C., and Lord  
 Bramwell, that Thomas took an estate for life, with  
 remainder to his children (if any) in fee as pur-  
 chasers. **BOWEN v. LEWIS** - 9 App. Cas. 890,  
 [54 L. J. Q. B. 55, 52 L. T. 189 (H.L., E.)]

2. — *Estate for Life or in quasi tail—Some*  
*taking as Purchasers—Estate taken by Trustees—*  
*Fee-Farm grant to Tenant in quasi tail.* A  
 testator, who held certain lands under a lease for  
 lives renewable for ever, by his will, which came  
 into operation prior to the Wills Act, 1837, devised  
 all his estate in the lands to trustees upon trust, in  
 the first place, out of the rents and profits to pay  
 such sum or sums as the guardians of his third son  
 G. S. R. should appoint for the maintenance of his  
 son during minority; and he directed that the  
 residue of the rents should accumulate at interest  
 in Government securities for the benefit of G. S. R.  
 until he attained twenty-one, and that as soon as  
 he attained twenty-one, or married with the con-  
 sent of his guardians, then the accumulations and  
 Government securities should be handed over to  
 him. And as to the said lands, the testator de-

**VII. WILL—ESTATE IN REALTY—continued.**

clared that they were so given and devised to the  
 said trustees, upon trust, in the first place, that the  
 rents should accumulate during the minority of  
 G. S. R. until he should attain twenty-one, or  
 marry with the consent of his guardians; and, in  
 the next place, to suffer G. S. R. to take the rents  
 of the said lands for life, and after his death then  
 to the use of the issue of G. S. R. lawfully begotten,  
 male and female, in such shares and proportions as  
 G. S. R. should by deed or will appoint; and for  
 want of such appointment, the said lands to go to  
 and among all the lawful issue of G. S. R. living  
 at the time of his death, share and share alike, and,  
 if but one child living, then the whole of said lands  
 to go to such only child, male or female, his or her  
 heirs or assigns for ever. If G. S. R. should die  
 without leaving issue, the testator devised the lands  
 to E. R. and T. R. in fee; and in case G. S. R.  
 should marry without the consent of his guardians,  
 or should die under twenty-one without leaving  
 issue, he directed that the lands should be con-  
 veyed by the trustees to E. R. and T. R. in fee.  
 G. S. R. attained age, and obtained a fee-farm  
 grant of the said lands, in which it was recited  
 that G. S. R. was tenant for life. G. S. R. died  
 without issue, having made a will not purporting  
 to dispose of these lands, but containing a re-  
 siduary devise. In an action by his residuary  
 devisee against persons claiming under E. R. and  
 T. R.:—*Held*, by Chatterton, V.C., that G. S. R.  
 took an estate in *quasi* tail in the lands; that by  
 obtaining the fee-farm grant he had barred the  
 entail, and that the lands passed under his will to  
 the plaintiff.

*Held*, by the Court of Appeal, reversing the  
 judgment of the V.C., that G. S. R. took an estate  
 for life only in the lands, with remainder to his  
 issue living at his death, in *quasi* fee, and that on  
 his death without having had such issue E. R. and  
 T. R. became entitled in *quasi* fee. **RODDY v.**  
**FITZGERALD** (6 H. L. C. 823) commented on and  
 distinguished. **ROTHERHAM v. ROTTERHAM**  
 [13 L. R. Ir. 429 (O.A.)]

3. — *Estate tail or for Life—Evidence—*  
*Family reputation—Facts constituting Pedigree in-*  
*cidental relevant to action of Ejectment.* By a

will, coming into operation prior to the Wills Act,  
 the testator devised all his freehold estate, right, title  
 and interest, in certain lands to his wife for life,  
 subject to legacies; remainder to his son J. for  
 life; remainder, after the decease of J., "to his first  
 and every other son lawfully to be begotten, accord-  
 ing to seniority of age and priority of birth"; re-  
 mainder to T. for life; remainder to his first and  
 every other son and their heirs. In a subsequent  
 part of the will the testator bequeathed a sum of  
 money, charged on said lands, to his daughter M.,  
 and desired that, in case she should die unmarried,  
 it should go and enure to J., if then living, or to  
 the heirs male of his body:—*Held*, that J.'s sons took  
 successive life estates only in the lands.

In an ejectment on the title brought by J. B.,  
 who was J.'s younger son:—*Held*, that evidence of  
 family reputation was inadmissible to prove the fact  
 of the death of R., an elder brother of the plaintiff  
 J. B. **PALMER v. PALMER** - 16 L. R. Ir. 357  
 [On appeal the Court ordered the verdict to be  
 entered for the plaintiff.]

**VII. WILL—ESTATE IN REALTY—continued.**

4. — *Estate Tail* — “*Issue*” — *Words of Limitation or Purchase.*] After a devise to the “*issue*” of A. the mere addition of words of limitation to the “*heirs, executors, administrators, and assigns*” of the issue will not convert the term “*issue*” into a word of purchase, and so prevent it from operating as a word of limitation to give an estate tail. Dictum of Lord St. Leonard’s in *Montgomery v. Montgomery* (3 Jo. & Lat. 57) discussed. *WILLIAMS v. WILLIAMS* 51 L. T. 779, [33 W. R. 118, W. N. (1884) 198]

5. — *Will coming into operation prior to Wills Act*—*Words sufficient to confer estate in fee*—*Devise to several persons for life, with remainder to their issue female to take as tenants in common*—*Gift over in default of issue*—*Issue female held to take as purchasers.*] A testator, after reciting that he wished to dispose of all his worldly substance, and to settle and assure his several estates in the counties of C. and L. to the several uses and purposes therein set forth, devised the same unto his sister A. L. for life; and, on her death, he declared it to be his will and intention to settle and assure his said estates amongst certain families named in the following “*parts or proportions*”; and he then gave to six persons one-sixth “*part*” each, and declared that the several six parts should remain to each of the said devisees for life, with remainder to the first and every other son of each of the said devisees, severally and successively in tail male, and in default of such issue, then with remainder to the issue female of each or any of the said devisees, to take as tenants in common, and not as joint tenants. And that in case of the decease of any of said six devisees without issue, male or female, either in the testator’s lifetime or after his decease, then the one-sixth part or parts of those who should happen to die without issue should go to and augment the shares of such survivors “*so long as the entail intended to be thereby created should continue to subsist*”; and, in case all his said estates should, under such limitations as aforesaid, vest in any one of his said devisees, or their heirs male, his will and intention was that such person should take the name and arms of the testator:—

*Held*, by the Vice-Chancellor and by the Court of Appeal, affirming his decision, that, under the above will, the six devisees took estates for life only, with remainder (after the express estates in tail male limited to their first and other sons) to their issue female in fee as purchasers. *SHANNON v. GOOD* — — — 15 L. R. Ir. 284 (C.A.)

**VIII. WILL—EXECUTORS—***Bequest to, in that character—Rebuttal of Presumption—Parol Evidence.*] The mere fact that the gift of the legacy precedes the appointment of the legatee as executor—or that the legacies to several persons appointed executors differ either in their amount or subject-matter is not enough by itself to rebut the presumption that a legacy given to a person who is appointed executor is annexed to the office. Decision of Chitty, J. (W. N. 1884, p. 133, 1884 Dig. col. 540) affirmed.

*Jewis v. Lawrence* (L. R. 8. Eq. 345) questioned. *Wildes v. Davies* (1 Sm. & Giff. 475; 22 L. J. (Ch.) 497) explained.

**VIII. WILL—EXECUTORS—continued.**

*Per Cotton, L. J. (dubitante, Fry, L. J.):*—Parol evidence is admissible to rebut this, as well as any other, presumption. *In re APPLETON. BARBER v. TEBBIT* 29 Ch. D. 893, 54 L. J. Ch. 954, [52 L. T. 908, 49 J. P. 708 (C.A.)]

2. — *Bequest to—Statute of Limitations* (3 & 4 Wm. 4, c. 27)—*Express Trust.*] A testator bequeathed the lands of K. (building ground) to his son, F. J. N., whom he appointed executor. He directed the lands to be built on according to certain plans with power to F. J. N. to alter them, and power to make building leases. He appropriated the rents of the lettings for building and of other property for carrying out his general trust, which he did not clearly define, and gave his executor duties to perform of a continuing character to keep the furniture and the house in which he had resided for his daughters and sisters-in-law, and supply the latter with clothes and pocket-money; and to continue to carry on a certain business in which he had himself been engaged, &c.:—

*Held* (1), that the lands of K. were bequeathed to F. J. N. as executor, and not beneficially; (2) that F. J. N. took them on an express trust, which precluded him from availing himself of the Statute of Limitations (3 & 4 Wm. 4, c. 27).

*Salter v. Kavanagh* (1 Dr. & Wal. 668) followed. *NUGENT v. NUGENT* — — — 15 L. R. Ir. 321

*See also EXECUTOR.*

— *Legacy to A. if he shall conduct himself to satisfaction of testator’s executor.*

*See WILL—CONDITION. 1.*

**IX. WILL—ONEROUS DEVISE—***Mortgage.*] A testator devised and bequeathed a freehold house and the furniture and effects therein on trust for A. and B. for life. The house was subject to a mortgage for more than its value:—

*Held*, by Pearson, J., that A. and B. were entitled to the use of the furniture without keeping down the interest on the mortgage. *SYER v. GLADSTONE* — — — 30 Ch. D. 614

**X. WILL—PERPETUITY—***Bequest for Masses.*] Residuary bequest, the income thereof to be divided between the two priests officiating at the time of the testator’s decease, and such others as should be from time to time officiating in the parish of K., in consideration of their saving masses for the repose of the testator’s soul:—*Held*, void.

*Dillon v. Reilly* (I. R. 10 Eq. 152) distinguished. *DORRIAN v. GILMORE* — — — 15 L. R. Ir. 69

2. — *Remoteness—Divisible Gift—Gift to Children of A. who should attain Twenty-one—Period for ascertaining Class—Prior Trust for Accumulation of Income.*] Devise of real estate to trustees in fee, upon trust for J. for life, and after his death upon trust for his children who should attain twenty-one, and the issue of any child who should die under twenty-one leaving issue who should attain that age; but, in case there should be no child, nor the issue of any child of J. who should attain twenty-one, the property was to be held on trust for the child or children of R. who should respectively attain twenty-one, if more than one in equal shares. Provided always, that the rents of the trust premises should, during the term of

**X. WILL—PERPETUITY—continued.**

twenty-one years from the day next before the day of the testator's death, be accumulated by way of compound interest, and the accumulated fund should be held in trust for the child, if only one, or all the children equally, if more than one, of R. who should attain twenty-one. J. died without ever having had a child. R. had six children who attained twenty-one. The youngest of them was born after the eldest had attained twenty-one, but before the end of the period of accumulation:—

*Held*, by Pearson, J., that the gift over to the children of R. was divisible into two distinct alternative gifts, viz., (1) a gift over in the event of there never being any child of J.; (2) a gift over in the event of no child or issue of any child of J. attaining twenty-one; and that consequently the first alternative was not too remote, and the gift over was in the events which had happened good.

*Evers v. Challis* (7 H. L. C. 531) explained.

*Stuart v. Cockerell* (L. R. 5 Ch. 713) distinguished.

*Held*, also, that all the children of R. who were born during the period of accumulation, and who attained twenty-one, were entitled under the gift over. *WATSON v. YOUNG* - - - 23 Ch. D. 436, [54 L. J. Ch. 502, 33 W. R. 637]

**XI. WILL—RESIDUE—***Direction that Share "shall fall into residue."* A testator bequeathed the residue of his personal estate to his wife for life, and after her death to his sister and three brothers in equal shares; but directed that in the event of his sister dying unmarried in his wife's lifetime (which happened) "her one-fourth should fall into the residue":—

*Held*, by Bacon, V.C., that there was no intestacy as to the sister's one-fourth, but that the whole residue was, on the widow's death, divisible in thirds between the three other legatees.

*Humble v. Shore* (7 Hare, 247; 1 H. & M. 550, n.), *Lightfoot v. Burstall* (1 H. & M. 546), and *Crawshaw v. Crawshaw* (14 Ch. D. 817) considered. *Re RHODES. LANE v. RHODES* 29 Ch. D. 142, [54 L. J. Ch. 573, 53 L. T. 15, 33 W. R. 608]

2. — *General Words followed by particular description—Imperfect Enumeration.* A testator, by his will having made a bequest of a sum of money secured by mortgage, proceeded in the following terms:—I leave "the remainder of my personal property in Funds, Royal Bank, and other deposit dockets, to my wife absolutely." He then left pecuniary legacies to two individuals:—*Held*, that the words "in Funds, Royal Bank, and other deposit dockets," did not cut down the generality of the gift of "the remainder" of his personal property; and that the residue of the personal estate passed to the testator's wife under the bequest. *TIGHE v. FETHERSTONHAUGH* - 13 L. R. Ir. 401

3. — *Gift for Masses, to be applied at discretion of executor—Impossibility of carrying out testator's directions—Residue, particular or general.* M. by his will directed his executor to transfer any money that he might have in bank stock into the executor's name, and pay the income to his wife for life, or until she should marry again; and if she should marry again, that she should thereupon forfeit her life interest in the fund, and that the whole of the bank stock should, upon his wife's

**XI. WILL—RESIDUE—continued.**

second marriage, be distributed as follows:—£1000 to be realized by his said executor, and applied by him in having masses said for the testator's soul, and the residue to be distributed among such charities in Dublin as his executor in his absolute discretion might think fit. But if his wife did not marry again, that then, at her death, his executor should retain a sum of £2000 out of the said bank stock, and apply the same as he should see fit in having such number of masses as he approved of offered up for the repose of the souls of the testator and his wife; and the testator directed that the residue of the bank stock, after providing for such masses, should be divided by his executor into five equal parts, and paid to the treasurers of five different charitable institutions named in his will, and the testator appointed R., his executor, his residuary legatee.

The testator died, leaving his wife surviving; she did not re-marry, and survived R. The executor survived the testator, and died without having applied any portion of the bank stock in having masses said; and by his will he bequeathed all the property he derived, in reversion or otherwise, under the will of M. *Held*, reversing the judgment of the V.C. (13 L. R. Ir. 395) that the gift of the residue of the bank stock, after providing for such masses, was a specific gift of the portion of bank stock remaining after taking £2000 out of it; that M.'s widow, not having married again, and having survived R., the gift of £2000 failed, the event upon which it was given never having arisen; and that the legacy of £2000 fell into the general residue, and therefore passed to R. under the residuary bequest in M.'s will. *FEE v. MCMANTS* [15 L. R. Ir. 81]

**XII. WILL—REVOCATION**—Cancellation by drawing scroll through signature, so as not to render it illegible—Evidence of declaration of testator. *GAY v. GAY* - - - 46 Amer. R. 78 (U.S.)

2. — *Codicil—"To or in favour of."* P. by his will bequeathed the residue of his estate upon trusts for his children, and as to his sons' shares directed that half should be held absolutely and half settled. By a codicil he revoked every devise or bequest "to or in favour of" his son S.:—*Held*, by Kay, J., that the interest of the children of S. in the settled moiety was revoked by the codicil. *PRENTICE v. TABOR* (or *TABOR v. PRENTICE*) [52 L. T. 85, 32 W. R. 872]

3. — *Direction in Codicil to Strike out Names of Legatees in Will.* S., the testatrix, gave all personalty to her three sisters by name, upon trust to invest or apply the income for their benefit during their joint lives, with benefit of survivorship amongst them; and upon the death of the survivor, in case any of S.'s nephews, D. and R., and her niece M., should be then living, S. gave her personalty to trustees, upon trust to assign the same to D., R., and M. in equal shares, or to such of them as should then be living; and if but one, then the whole was to be assigned to such one absolutely. But, in case of the death of the said nephews and niece, leaving either of the said sisters surviving, S. bequeathed the property to the survivor of her said sisters absolutely. By a codicil S. requested that all names of D., M., and R., should be considered as if omitted in her will.

**XII. WILL—REVOCATION—continued.**

*Held*, by Pearson J., that the effect of the direction in the codicil to omit these names was to give the property absolutely to the survivor of the three sisters. *Re STEPHENSON. STEPHENSON v. STEPHENSON* 54 L. J. Ch. 928, 52 L. T. 576, [W. N. (1885) 62]

4. — Obliteration by pen-marks of legacies, clause appointing executor's and testator's signature—English cases considered. *SUCCESSION OF MÜH* [48 Amer. R. 242 (U.S.)]

5. — Obliteration of certain words, conversion of life estate into fee simple thereby, observations on *Swinton v. Bailey* (4 App. Cas. 70). *ESCHBACH v. COLLINS* 48 Amer. R. 123 (U.S.)

6. — *Subsequent Will—Evidence—Admissibility of Memorandum.* Testator made a will in 1864 appointing his wife sole executrix, and duly executed another document in 1877. There was no evidence of the contents of the second document except that after its execution the testator said, "I have made a will altering my affairs, and I have taken care of Ellen, and there will be something for Roby," and except a memorandum at the foot of the will as follows: "This will is now useless, a new will having been made in October, 1877, upon my wife telling me she was sorry she had ever seen me," &c. :—*Held*, by Butt, J., that, in the absence of proof of an alteration of executrix or of a revocatory clause of disposition wholly inconsistent with the first will, that will was not revoked, and was therefore entitled to probate. *Quære*, whether the memorandum was admissible in evidence to shew an intention to revoke the first will. *HELLIER v. HELLIER* — 9 P. D. 237, 53 L. J. P. 105, [33 W. R. 324, 49 J. P. 8.]

7. — *Two testamentary papers admitted to probate—The words "Last Will" not a revocation of former wills.* A testatrix made a will on the 9th February, 1884, which she declared to be her last will, revoking all previous wills, and appointing a residuary legatee and an executor. On the 19th February, 1884, she made another will, which commenced: "I declare this to be my last will," and bequeathing legacies out of her money in the Savings Bank (part of her property) and appointing another executor:—*Held*, that the latter did not revoke the former will, and the two documents were admitted to probate. *IN THE GOODS OF JULIA O'CONNOR* — 13 L. R. Ir. 406

**XIII. WILL—TRUSTEES—Power to continue business—Tenant for Life—Capital and Income.** A. gave all his realty and personalty to trustees upon trust for sale, conversion, and investment, and to pay the income of one-fifth part to his wife for life, and subject thereto to divide the whole into four parts, and pay the income of one such part to each of his four daughters for life, and after her death to hold such part in trust for her children equally. And he empowered his trustees to carry on any business carried on by him, and directed that the net profits of any business so carried on should, except such parts thereof as the trustees should in their discretion reserve for the purpose of increasing the capital in such business, be treated as income of his said trust estate. And he directed that, should any losses (not being the result of neglect) fall on his trustees in consequence of his

**XIII. WILL—TRUSTEES—continued.**

carrying on such business, the same should be defrayed out of his estate. The testator left property employed in business and other property. The trustees carried on the business, and duly invested the other property. For some years the business was successful, and the profits were duly divided among the tenants for life. In a subsequent year losses were incurred, and the trustees claimed that they should be recouped out of the income of the trust estate generally.

*Held*, by Pearson, J., that the losses must be borne by the capital of the testator's estate, and not by the tenants for life. *Re MILLICAMP. GOODALE v. BULLOCK* 52 L. T. 758, W. N. (1885) 62

2. — *Trust for Sale—Power to increase Capital employed in Business—Mortgage to secure Business Debts—Administration Action—Petition for leave to Intervene.* D., who died in 1866, devised and bequeathed all his property upon trust for sale and conversion, and empowered his trustees to carry on his business for such time as they should see fit, and to employ in the business all the capital which might be invested therein at the time of his decease, and the profits thereof, and to increase or abridge the business and his capital therein, and generally to transact all matters and concerns respecting the business, and to do all acts relative thereto, in the same manner as if they were absolutely entitled to the same.

D.'s personalty comprised nearly all the capital of the business. His realty consisted of the buildings on which the business was carried on, and for which he received a rent.

The trustees carried on the business after D.'s death in partnership with others, but the firm became bankrupt. In 1869 one of the trustees advanced to his co-trustees £2000, and the title-deeds relating to the business premises were deposited with him for securing the repayment of the advance with interest. The money was applied for the purposes of the business. This transaction had not been disclosed.

In Jan. 1882, an action was begun to administer D.'s estate, and in pursuance of an order made in the action, the business was sold in 1883. In Sept. 1882, certain of the beneficiaries mortgaged all their respective shares under the will to secure repayment to a bank of £4600. The bank applied by petition for leave to intervene in the action, and obtain payment of their debt. The question was, whether the trustees had power to make an equitable mortgage of realty, which did not form part of the assets employed in the business, for the purposes of the business.

*Held*, by Kay, J., that power to employ other assets in the business was conferred on the trustees by the authority to increase the capital of the business; that, as they could have sold the realty and used the proceeds in the business, they were not wrong in using the property itself to assist in carrying on the business; and that the mortgage of 1869 had priority over the mortgage of 1882:—

*Held*, also, that, as the banking company were not creditors of the testator, they had taken the most convenient course in applying to intervene by petition. *Re DIMMOCK. DIMMOCK v. DIMMOCK* [52 L. T. 494]

See also TRUSTEE.

**XIII. WILL—TRUSTEES—continued.**

— Direction to continue business—Joint and separate estate.

See **BANKRUPTCY—PROOF.** 4.

**WILL—Advancement.**

See **ADVANCEMENT.**

— Charitable gift.

See **CHARITY.** 2—11.

— Devise of realty on trust to pay debts—No real estate.

See **LIMITATIONS, STATUTE OF.** 2.

— Execution of.

See **PROBATE.** 1, 2.

— Exercise of power by.

See **POWER.**

— Married woman's—After-acquired property.

See **HUSBAND AND WIFE—MARRIED WOMEN'S PROPERTY ACTS.** 13.

— Probate.

See **PROBATE.**

**WINDING-UP.**

See **COMPANY—VOLUNTARY WINDING-UP.**

**COMPANY—WINDING-UP.**

**WINDOWS—Obstruction of light.**

See **EASEMENT, LIGHT.**

**WITNESS.**

See **EVIDENCE.**

**PRACTICE—EVIDENCE.**

— Bastardy—Refusal to give evidence.

See **BASTARDY.** 3.

— Illiterate—Affidavits—Taking off file.

See **PRACTICE—EVIDENCE.** 6.

**WOMAN PAST CHILDBEARING—Presumption.**

See **EVIDENCE.** 11.

**WORDS :—**

— "Abstract of deed."

See **VENDOR AND PURCHASER—TITLE.** 1.

— "Action."

See **PRACTICE—APPEAL.** 15.

— "Allowance."

See **PUBLIC HEALTH ACTS.** 11.

— "Annual profits or gains."

See **REVENUE.** 3.

— "Annual rack rent or value."

See **WATER RATE.** 2.

— "Assignee."

See **SOLICITOR—BILL OF COSTS.** 20.

— "Bare trustee."

See **VENDOR AND PURCHASER—CONVEYANCE.** 2.

— "Benefice with cure."

See **ECCLESIASTICAL LAW.** 1.

— "Book separately published."

See **COPYRIGHT.** 1.

— "Buildings."

See **SETTLED LAND ACT.** 4.

— "Business and goodwill."

See **WILL—CONSTRUCTION.** 5.

— "Certificate."

See **VENDOR AND PURCHASER—TITLE.** 4.

— "Charitable and deserving objects."

See **WILL—CONSTRUCTION.** 27.

**WORDS—continued.**

— "Child or children."

See **WILL—ESTATE IN REALTY.** 1.

— "Children."

See **WILL—CONSTRUCTION.** 6—9.

— "Clerk."

See **PRACTICE—WRIT.** 2.

— "Common to the trade."

See **TRADE-MARK.** 17.

— "Commonly understood."

See **MUNICIPAL CORPORATION.** 2.

— "Composition."

See **LIMITATIONS, STATUTE OF.** 13.

— "Contingent liability."

See **EXECUTOR—ACTIONS.** 1.

— "Contract."

See **PUBLIC HEALTH ACTS.** 11, 12.

— "Conveyance."

See **VOLUNTARY CONVEYANCE.** 1, 2.

— "Criminal cause or matter."

See **PRACTICE—APPEAL.** 6.

— "Debt or liability."

See **BANKRUPTCY—PROOF.** 2.

— "Dying without issue."

See **WILL—ESTATE IN REALTY.** 1.

— "Estate."

See **WILL—ESTATE IN REALTY.** 1.

— "Event."

See **PRACTICE—COSTS.** 9, 10.

— "Evidence."

See **VENDOR AND PURCHASER—TITLE.** 4.

— "First and second cousins."

See **WILL—CONSTRUCTION.** 12.

— "Fish."

See **FISHERY.** 1.

— "For the time being."

See **TRADE-MARK.** 20.

— "Forfeiture."

See **SETTLEMENT—FORFEITURE CLAUSE.** 4.

— "Free from all deductions."

See **REVENUE.** 13.

— "Frequenting."

See **VAGRANT ACTS.**

— "Furniture, goods and chattels."

See **WILL—CONSTRUCTION.** 13.

— "Heirs."

See **WILL—CONSTRUCTION.** 14—17.

— "Income."

See **BANKRUPTCY—ASSETS.** 2.

— "Issue."

See **WILL—CONSTRUCTION.** 19.  
**WILL—ESTATE IN REALTY.** 4.

— "Land."

See **LANDS CLAUSES ACT.** 14.

**SETTLED LAND ACT?** 18.

— "Lease."

See **BUILDING CONTRACT.** 1.

— "Lessee."

See **LANDLORD AND TENANT—RE-ENTRY.** 3.

— "Mistake."

See **PARLIAMENT.** 6.

— "Moderate speed."

See **SHIP—COLLISION.** 11, 14.

**WORDS—continued.**

- "Molestation"  
See HUSBAND AND WIFE—SEPARATION DEED. 2.
- "Money."  
See WILL—CONSTRUCTION. 27, 28.
- "Mortgages on real and leasehold security."  
See WILL—CONSTRUCTION. 29.
- "Narrow channel."  
See SHIP—COLLISION. 16.
- "Next-of-kin."  
See WILL—CONSTRUCTION. 30.
- "Officer."  
See PRACTICE—WRIT. 2.
- "Order."  
See PRACTICE—APPEAL. 2.
- "Ordinary outgoings."  
See WILL—CONSTRUCTION. 32.
- "Party."  
See BANKRUPTCY—EXAMINATION. 2.
- "Pave."  
See METROPOLIS. 7.
- "Payable."  
See SETTLEMENT—CONSTRUCTION. 5.
- "Person employed in the mine."  
See MINE.
- "Port."  
See SHIP—CHARTERPARTY. 3.
- "Pretenced title."  
See VENDOR AND PURCHASER—TITLE. 6.
- "Proceeds of goods taken in execution."  
See SHERIFF. 3.
- "Profits."  
See PRACTICE—ACCOUNTS. 3.
- "Property."  
See BANKRUPTCY—DISCLAIMER. 1.
- "Provisions."  
See MARKET. 4.
- "Public building."  
See METROPOLIS. 13.
- "Public place."  
See CRIMINAL LAW. 11.
- "Real estates wheresoever situate."  
See WILL—CONSTRUCTION. 36.
- "Receipt."  
See REVENUE. 12.
- "Rent."  
See BANKRUPTCY—DISTRESS.
- "Rent having no money value."  
See CONVEYANCING ACT.

**WORDS—continued.**

- "Securities for money."  
See WILL—CONSTRUCTION. 38.
- "Seised jointly."  
See TRUSTEES ACTS. 6.
- "Severally."  
See WILL—CONSTRUCTION. 39.
- "Sewer."  
See PUBLIC HEALTH ACTS. 15, 16.
- "Shares."  
See WILL—CONSTRUCTION. 40.
- "Site."  
See METROPOLIS. 11.
- "Stock standing in my name."  
See WILL—CONSTRUCTION. 43.
- "Street."  
See HIGHWAY. 2.  
METROPOLIS. 5.
- "Surviving."  
See WILL—CONSTRUCTION. 44, 45.
- "Survivor."  
See WILL—CONSTRUCTION. 46, 47.
- "Tenement."  
See PARLIAMENT. 2.
- "Theretofore."  
See TOWNS IMPROVEMENT ACT.
- "Trade or business."  
See BANKRUPTCY—TRADER.
- "Turnpike road."  
See HIGHWAY. 2.
- "Unmarried."  
See WILL—CONSTRUCTION. 48.
- "Visible means."  
See COUNTY COURT. 7.
- "Without having been married."  
See SETTLEMENT—CONSTRUCTION. 6.

**WORKMAN.**

See MASTER AND SERVANT.

**WRIT OF POSSESSION**—Issue after expiration of Plaintiff's title.

See LANDLORD AND TENANT—HOLDING OVER. 2.

**WRIT OF SUMMONS.**

See PRACTICE—WRIT.

**Y.****YEARLY TENANCY**—Notice to determine.

See LANDLORD AND TENANT—YEARLY TENANCY.

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